




**MINERALS PROGRAM INSPECTION REPORT**  
**PHONE: (303) 866-3567**

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

<b>MINE NAME:</b> Western Slope Flagstone Quarry No. 2	<b>MINE/PROSPECTING ID#:</b> M-1996-076	<b>MINERAL:</b> Gravel	<b>COUNTY:</b> Mesa
<b>INSPECTION TYPE:</b> Monitoring	<b>INSPECTOR(S):</b> Amy Yeldell and Clayton Wein	<b>INSP. DATE:</b> July 21, 2020	<b>INSP. TIME:</b> 08:20 a.m-9:40 a.m.
<b>OPERATOR:</b> Rudolph Fontanari	<b>OPERATOR REPRESENTATIVE:</b> Brett Fontanari	<b>TYPE OF OPERATION:</b> 112c - Construction Regular Operation	
<b>REASON FOR INSPECTION:</b> High Priority	<b>BOND CALCULATION TYPE:</b> None	<b>BOND AMOUNT:</b> \$88,251.00	
<b>DATE OF COMPLAINT:</b> NA	<b>POST INSP. CONTACTS:</b> None	<b>JOINT INSP. AGENCY:</b> DRMS	
<b>WEATHER:</b> Clear	<b>INSPECTOR'S SIGNATURE:</b> 	<b>SIGNATURE DATE:</b> August 7, 2020	

**GENERAL INSPECTION TOPICS**

This list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each. No problems or possible violations were noted during the inspection. The mine operation was found to be in full compliance with Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and/or for Hard Rock, Metal and Designated Mining Operations. Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; or any environmental protection facility designed to contain or control chemicals or waste which are acid or toxic-forming, as identified in the permit.

(AR) RECORDS----- <u>N</u>	(FN) FINANCIAL WARRANTY----- <u>N</u>	(RD) ROADS----- <u>Y</u>
(HB) HYDROLOGIC BALANCE----- <u>Y</u>	(BG) BACKFILL & GRADING----- <u>Y</u>	(EX) EXPLOSIVES----- <u>N</u>
(PW) PROCESSING WASTE/TAILING----- <u>N</u>	(SF) PROCESSING FACILITIES----- <u>N</u>	(TS) TOPSOIL----- <u>N</u>
(MP) GENL MINE PLAN COMPLIANCE- <u>Y</u>	(FW) FISH & WILDLIFE----- <u>Y</u>	(RV) REVEGETATION---- <u>Y</u>
(SM) SIGNS AND MARKERS----- <u>N</u>	(SP) STORM WATER MGT PLAN---- <u>N</u>	(RS) RECL PLAN/COMP-- <u>N</u>
(ES) OVERBURDEN/DEV. WASTE----- <u>Y</u>	(SC) EROSION/SEDIMENTATION--- <u>N</u>	(ST) STIPULATIONS----- <u>N</u>
(AT) ACID OR TOXIC MATERIALS----- <u>NA</u>	(OD) OFF-SITE DAMAGE----- <u>N</u>	

Y = Inspected / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

## **OBSERVATIONS**

This inspection was conducted by the Colorado Division of Reclamation, Mining and Safety (Division). The Western Slope Flagstone Quarry No. 2 is a 112c permitted site that includes a total of 141.2 acres with a maximum disturbance of 22 acres ("site"). The 112c Construction Materials permit site is located approximately three miles northeast of Palisade, Colorado and can be accessed from I-70 or Rapid Creek Road.

This inspection was a joint inspection conducted by Amy Yeldell (ACY) and Clayton Wein (CCW) both representing the Division. Also present for the inspection was Brett Fontanari representing the Operator-Rudolph Fontanari. Brett is the son of Rudy. Tonya Hammond of Snowcap Coal was also on site to conduct the inspection of the Roadside Portals which overlaps the Western Flagstone Quarry No. 2.

Following the Division's June 1 and 8, 2020 inspections, a Reason to Believe a Violation Exists (RTB) and Notice for Hearing was sent on June 17, 2020. The RTB matter was originally scheduled for the Mined Land Reclamation Board's (MLRB) July hearing but was continued to the August 19-20 hearing. On July 21, the Division conducted a follow up inspection to verify site conditions. Due to physical threats made by the Operator's representative, Brett Fontanari, with the waiving around of a pocket knife and holstered gun towards Division staff, a complete inspection of the site was not possible. Below is a recount of the observed site conditions and the events that led to the termination of the site inspection prior to completion.

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Rudy Fontanari was notified via phone by the Division (ACY) of the July 21<sup>st</sup> inspection on Friday June 17, 2020. Rudy Fontanari was also informed that CCW would be accompanying ACY on the inspection.

ACY was the first to arrive at the site, meeting at the gate on the east side haul road at 8 AM. ACY proceeded to wait in her vehicle until CCW and Tonya Hammond arrived at the site. Brett Fontanari approached ACY's vehicle (without any sort of COVID face covering). ACY rolled down her vehicle window and was immediately questioned by Brett Fontanari as to who she was and why she was there. ACY reintroduced herself, having met Brett Fontanari previously at the site, and explained that the Division had scheduled a follow-up inspection of the site. Brett Fontanari stated in a chastising manner that "nothing has changed and you won't find anything else at the site". ACY responded "that's fine we're simply here to document site conditions." ACY was asked if she needed to be let into the site and she reminded him that she was waiting on other parties and that the Division would conduct the inspection as soon as everyone arrived. ACY was once again questioned as to who was 'we' and why other people were joining the site inspection. After ACY again stated to Brett Fontanari that CCW and Tonya Hammond were joining the site inspection, Brett Fontanari went back to his truck until CCW and Tonya Hammond arrived.

Shortly thereafter, Tonya Hammond arrived on site, followed by CCW. ACY, CCW, Tonya Hammond and Brett Fontanari briefly discussed the plan for the inspection. At 8:20 AM Brett Fontanari opened the gate and we began the site inspection. All parties drove in separate vehicles with ACY in lead, then CCW, followed by Tonya Hammond, and Brett Fontanari in the rear. All parties, with the exception of Brett Fontanari, wore face coverings when outside of their vehicle and in close proximity to others throughout the inspection.

The Division stopped at the bottom of the hill (Location 1 on map) to quickly take a few pictures of the access road (see Photo One). No discussions occurred at this location. On the lower portions of the access road, large amounts of Halogeton (a Class C State Listed Noxious Weed) was observed. Additional pictures of the road cut were taken while driving up the access road. Water was observed seeping out of the northeast face of the haul road in several locations (see Photos Two and Three).

Once on top of the mesa, the northern pits were inspected (Location 2 on map). Brett Fontanari and CCW exited their vehicles to look at the western pit and join ACY in discussion. Everyone stood approximately six feet apart. It was noted that the pit remained dry. Lots of Halogeton was observed along the roadways and disturbed areas, in addition to Russian Thistle and Kochia (see Photo Four). ACY asked Brett Fontanari if any spraying of noxious weeds has occurred or if they planned on treating Halogeton or any of the other weeds on site. Brett Fontanari proceeded to explain that "Halogeton is native and that's been here for eons." Brett Fontanari also stated that "Colorado Parks and Wildlife doesn't spray theirs across the valley (at the Cameo shooting range) so why should they have to." Brett Fontanari also stated that Mr. Cohn with Mesa County Noxious Weed and Pest sprayed some weeds while he was out there doing a vegetation survey. Brett Fontanari did not elaborate as to what was sprayed or where the spraying occurred. The Division has no record of this weed spraying occurring, nor was it mentioned in Mr. Cohn's inspection report dated June 22, 2020. ACY acknowledged Brett Fontanari's response and simply stated "so no weeds have been treated."

While discussing what site locations would be observed next, Brett Fontanari brought up the water seepage along the haul road. The Division stated that photos of the seepage were taken during the current inspection. Brett Fontanari continued to go on to explain that the water is the result of the coal mine -- not irrigation. ACY asked Brett Fontanari, "When did they run out of water for the middle field?" Brett Fontanari stated "it's been at least two months since they ran out of water and that both Rapid Creek and Cotton Creek are dry." Brett Fontanari continued to become more agitated as he elaborated as to why the coal mining lead to the seepage. Throughout the course of this ten minute discussion, Brett Fontanari physically stepped closer and closer to ACY and CCW until he was within arm's reach.

As a result of Brett Fontanari becoming confrontational, ACY walked away in an effort to move the site inspection along and to deescalate the situation with the obviously hostile Brett Fontanari. While walking back to their respective vehicles, ACY asked Tonya Hammond, who had waited at the vehicles, if she knew the last date of irrigation since Mrs. Hammond conducts frequent inspections of the site. Mrs. Hammond quickly looked through her records and stated that June 16, 2020 was the last day she has record of irrigation. The Division notes that two months ago would have been approximately May 22, 2020. The Division observed irrigation of the middle field on both June 1, 2020 and June 8, 2020.

CCW and Brett Fontanari arrived back at the vehicles a few moments later. While taking notes in my vehicle ACY overheard Brett Fontanari requesting if CCW had a card. CCW responded "no, but I can write it down for you." CCW entered his vehicle to retrieve a piece of paper, to give Brett Fontanari his number as requested. Brett Fontanari followed CCW back to his vehicle where he stood in the open car door talking to CCW for approximately five minutes. ACY was unable to overhear the conversation topic.

Moving to the next site inspection location we passed the spill area noted in the June 8, 2020 inspection report. From the road and from a high vantage point (Location 3 on map), a portion of the spill appeared to still be present based on soil coloring (see Photo Five). The soil in this area appears to have been raked, but no actual removal appeared to have taken place. To date, the Division has received no corrective action documentation for the spill area from the Operator.

The next area to be inspected were the northern irrigation lines. The Division spent approximately 15 minutes inspecting/discussing the northern irrigation area. Division Staff stopped three times to take quick photos of the field before stopping for discussion at the northern tip (Location 4 on map) (see Photo Six). ACY explained to CCW what markers Rudolph Fontanari has placed to delineate the Construction Materials (112c) permit boundary so he knew its relation to coal permit C-1981-041. CCW stated that Brett Fontanari had mentioned earlier that he wanted to show us 'new' subsidence features and requested that the Division could look at those

features while we were here. Brett Fontanari then stated "they weren't new, but that Mr. Wein stated he hadn't seen them". Brett Fontanari quickly became argumentative as CCW explained that he had seen all the existing "subsidence" features but that if there were in fact new subsidence features that he was more than happy to document them. Brett Fontanari stated that the features weren't new and questioned that if the area was released by coal then why CCW was there looking at it. ACY then explained that she requested the accompaniment of CCW since he comes out monthly and she needed to conduct a Construction Materials permit inspection. In response, ACY was then told to "simmer down now" by Brett Fontanari. In an attempt to de-escalate the situation, CCW then clarified that the Division still has jurisdictional oversight of those areas. Due to Brett Fontanari's combative nature Division staff terminated the subject of discussion and all parties then returned to their vehicles to proceed with the inspection.

A hand full of photos were taken by the Division along the northern irrigation lines and of the middle field (see photos Seven and Eight). Division staff attempted to quickly take photos, discuss amongst themselves if needed and proceed with the site inspection in order to limit further in-person interactions with Brett Fontanari as much as possible.

Once at the southeast corner of the middle field (Location 5 on map), everyone (including Brett Fontanari) circled back up for a in person chat with the intention of looking at the main south pit area before concluding the Construction Materials permit portion of the inspection. Vehicles were parked along the road and the discussion took place next to the first (southern) riser of the middle field (see Photo Nine). General comments were made during this conversation on how good the middle field was coming in despite it being so hot and not currently being irrigated. Tonya Hammond and CCW made small talk about Roadside's reclaimed areas and that new portions of the shooting range had opened up. ACY then asked Brett Fontanari if they had intentions to cut and bale the field this year. Brett Fontanari stated that it was up to Rudy (Fontanari) and that he was unsure of Rudy's plans. At this point Brett Fontanari was approximately three feet away from ACY and five feet away from CCW. While Brett Fontanari was talking he held a folded pocket knife in his left hand which he repeatedly took out of his pocket and waved around while talking about different areas of the site. ACY noticed the pocket knife and purposefully took several steps back since Brett Fontanari was well within an arm's reach away for her at this point. ACY was then standing closer to Tonya Hammond, with CCW across from ACY. At that point ACY was approximately six feet away from Brett Fontanari. This was the first time Division staff was aware that Brett Fontanari had a weapon with him. At this point, Brett Fontanari's hand gestures with a pocket knife in his hand made ACY feel extremely uncomfortable. ACY continued the conversation by mentioning that given the lack of moisture it was doubtful they'd get more than one cut and did not directly confront Brett about the pocketknife in his hand.

The conversation then turned to the weather and how little rain they had received lately and how windy it continued to be this late in the year. While Brett Fontanari was talking he placed his left hand back in his pocket and pulled his right hand out of his pocket. In Brett Fontanari's right hand was a gun in a tannish gray holster which he waved around, including pointing over ACY's shoulder while Brett was talking. It took ACY and CCW a few seconds to register what Brett Fontanari was holding. At this point, Tonya Hammond was looking around in a different direction.

As soon as ACY registered that it was a gun, she immediately called him out on it and said something to the effect of "Ok were done, put the gun back in your pocket and leave, you are no longer welcome on any inspections, this is not ok, this is uncalled for, no one feels safe around you." Brett Fontanari immediately shoved the gun back in his pocket but never pulled his right hand back out of his pocket. Meanwhile Brett Fontanari took a few steps backwards and responded "you don't know what you saw, this is just a pocket knife and I was playing with stuff in my pockets" and pulled the knife out of his left pocket to show us. ACY then stated, "I'm not stupid, I have my concealed carry permit. That is a leather concealed carry holster that's

designed to clip to your belt inside your pants. I know what a gun looks like.” Rather than staying so close to Brett Fontanari, ACY, CCW, and Tonya Hammond decided to regroup in a different location. The Division’s plans to move down to the lower hemp field in an effort to seek safety were said aloud as everyone started to move back to their vehicles parked along the road. While Brett Fontanari was walking back to his truck he began shouting, “I don’t know why you’re freaking out, you’re making mountains out of mole hills.”

ACY, CCW and Tonya Hammond drove down the road approximately three-quarters of a mile (Location 6 on map). We were still on Fontanari property but no longer within the Construction Materials permit area. As we all began to get out of our vehicles, we noticed that Brett Fontanari had followed us and was getting out of his vehicle. We then once again quickly changed locations in an attempt to move away from Brett Fontanari.

On a previous inspection of the site, ACY ran into a neighbor of the Fontanari’s, Matt King, who is a Sheriff Deputy for Mesa County. Matt King said if Division staff ever felt uncomfortable during an inspection to not hesitate and to come seek shelter at his house. Acting on instinct, ACY led the group up Rapid Creek Road and parked in front of his driveway at the pull off (Location 7 on map). Shaking and on the verge of tears, ACY called her supervisor (Travis Marshall) while driving to seek guidance. Brett Fontanari did not follow us once we left Fontanari property.

As a result of Brett Fontanari’s actions during the announced site inspection, having a gun in a tannish gray holster in his right hand, which he waved around and pointed over ACY’s shoulder while talking, ACY called the Mesa County Sheriff’s dispatch to file a police report. ACY made the phone call to dispatch while parked on Rapid Creek Road near Matt King’s house. ACY was told by dispatch that a deputy would call her back to file the report given the Sheriff’s Office current workload. Meanwhile ACY, CCW, and Tonya Hammond all had several phone calls with their management and loved ones explaining the situation and asking for guidance during this highly stressful situation. Each time having to retell the events bringing up new emotions of fear and anxiety resulting from the ‘fight or flight’ reflex previously acted upon. Approximately fifteen minutes later ACY called dispatch back a second time to inform them that she would also like to press charges on Brett Fontanari due to the physical threat that was made during an announced Division inspection of a permitted site. It was also requested that a deputy come to the site location given that CCW and Tonya Hammond were unable to conduct the majority of their inspection as a result of Brett’s threat to physical safety. ACY was once again told by dispatch that a Mesa County Sheriff deputy would call her and services could be requested at that time.

While waiting for the Sheriff’s office to return their call, the group discussed the events, trying to work out the shock of it all and figure out what could have led to such a quickly explosive situation. We repeatedly assured each other that the situation was over and they were now safe. Meanwhile, from our location up Rapid Creek Road we could see who we believed to be Rudy Fontanari standing in his driveway watching us. Then CCW intentionally moved his vehicle in front of the group so we could continue to wait and talk behind cover. We later then saw a black car leave the residence which sent ACY into alert mode that Brett Fontanari may be returning. However, the black car was never seen approaching the Division’s location.

After waiting over an hour without any further contact from the Mesa County Sheriff Office, ACY called Colorado State Patrol to see if they would dispatch someone so that a report could be filed with them. ACY was told by Colorado State Patrol that they only deal with traffic matters and that ACY would have to wait on the Mesa County Sheriff Office. Frustrated with the lack of response from the Mesa County Sheriff Office, ACY, CCW and Tonya Hammond all decided to go into the Mesa County Sheriff Office in Grand Junction to file a report in-person.

Once at the station ACY was once again told to talk to dispatch. After talking to dispatch she told to wait in the office lobby until they could find an available deputy. After waiting for approximately thirty minutes ACY,

CCW, and Tonya Hammond were seen by Deputy Baca. Each of us gave our witness statements individually to Deputy Baca. We were told that if the Sheriff's office has additional questions that they would call us. ACY had to request the case number (20-20834) as no indication was given as to what the next steps would be or if any additional action was needed on our parts.

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Based on this incident, Division Staff is no longer conducting 'boots on the ground'/in-person inspections of this permitted Construction Materials site (Western Flagstone Quarry No. 2), Roadside Portals or any other Fontanari property.

Since October of 2019 no additional corrective action documentation of MV-2019-023 or the inspection report for June 1 and 8, 2020 has been received by the Division. At this time staff is unable to further verify any site conditions.

Responses to this inspection report should be directed to: Scott Schultz, Assistant Attorney General Natural Resources Section, Ralph L. Carr Colorado Judicial Center, 1300 Broadway, 10th Floor, Denver CO 80203. By phone at 720-508-6256 or email [scott.schultz@coag.gov](mailto:scott.schultz@coag.gov).

Inspection Contact Address

Rudolph Fontanari  
3316 E 3/4 Road  
Clifton, CO 81520

Enclosures:  
Nine Pictures  
Location Map

EC:  
John R. Henderson, Attorney  
Trevor Gross, Operators E-Permitting Contact  
Travis Marshall, DRMS  
Russ Means, DRMS  
Lucas West, DRMS  
Scott Schultz, AGO  
Jeff Fugate, AGO  
Clayton Wein, DRMS  
Jim Stark, DRMS  
Montana Cohn, Mesa County Noxious Weed and Pest Department  
Ben Krause, DWR



**PHOTOGRAPHS**



Photo One: Mine access road overview

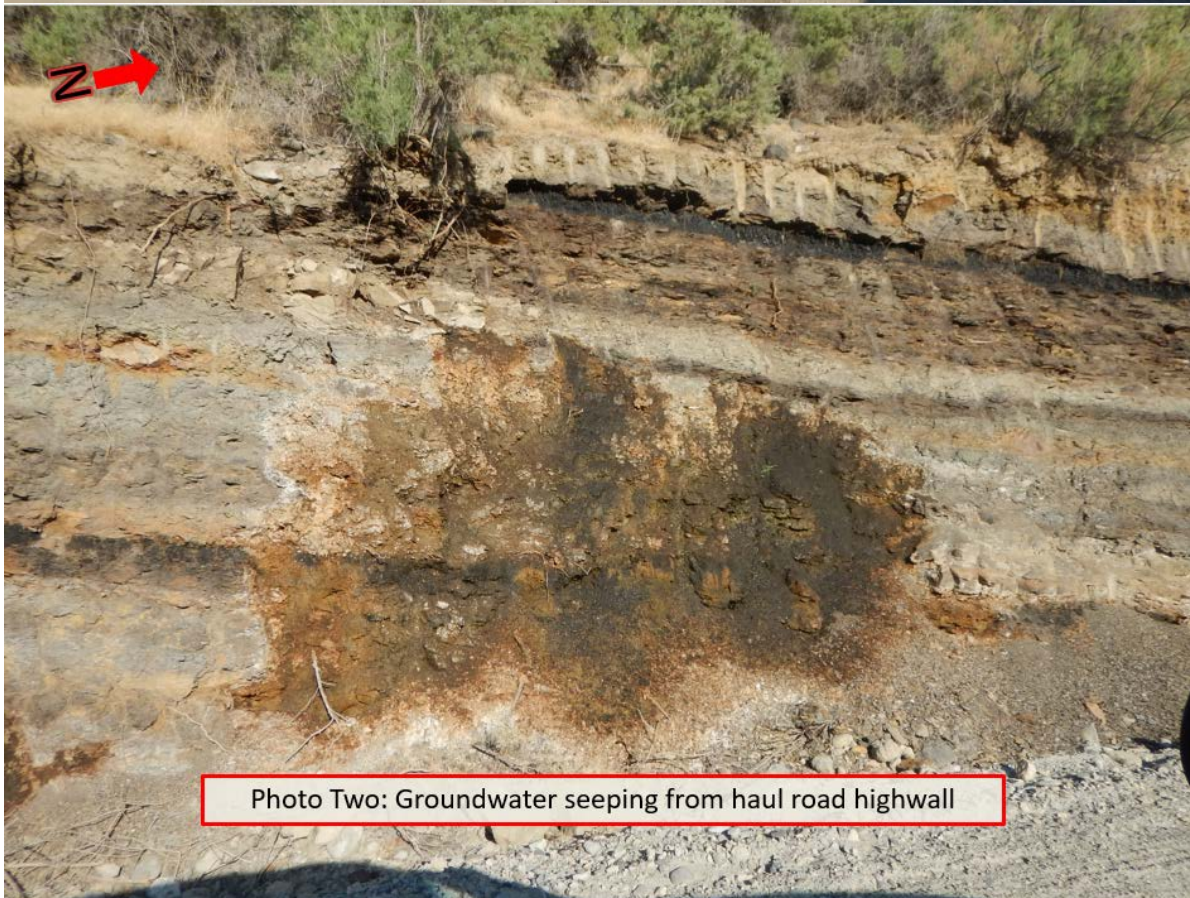


Photo Two: Groundwater seeping from haul road highwall





Photo Three: Groundwater seeping from haul road highwall



Photo Four: Northwest pit dry, several noxious weeds





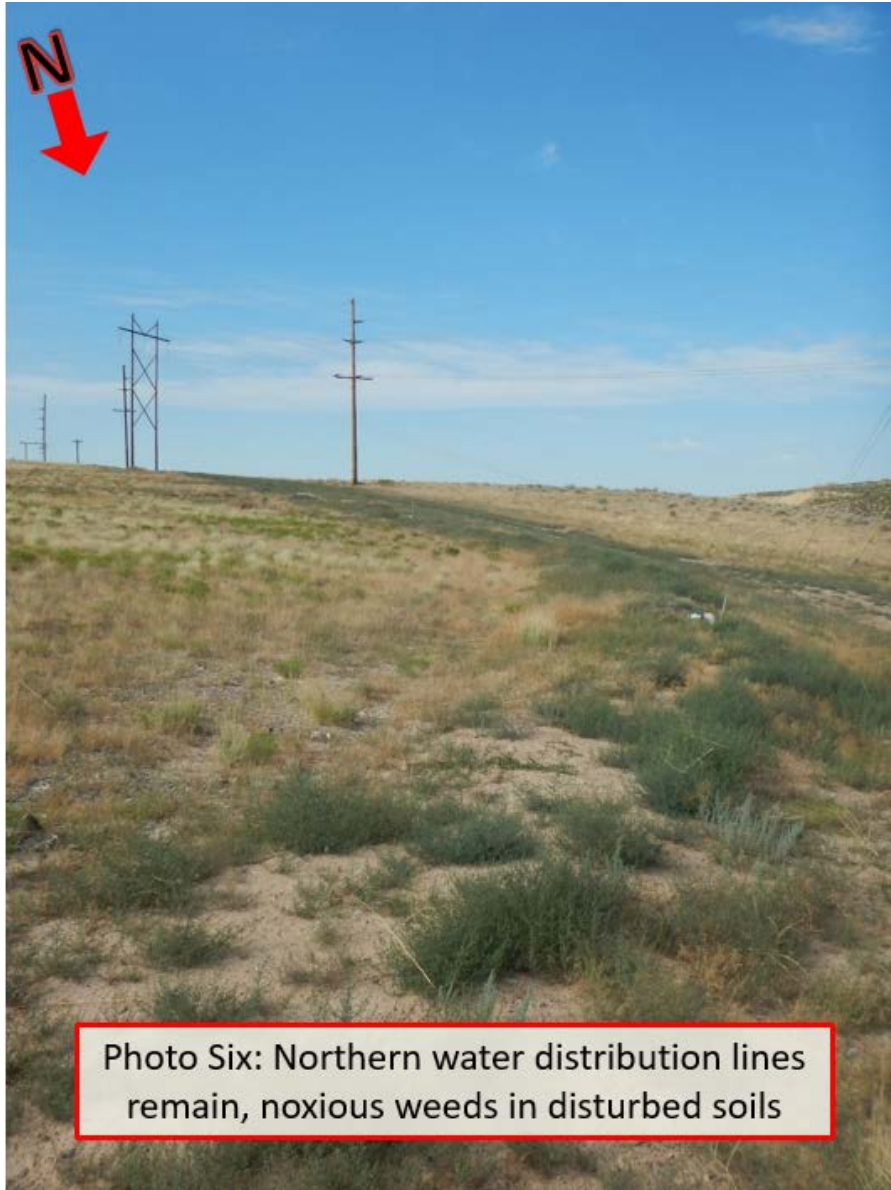




Photo Seven: Overview of middle field

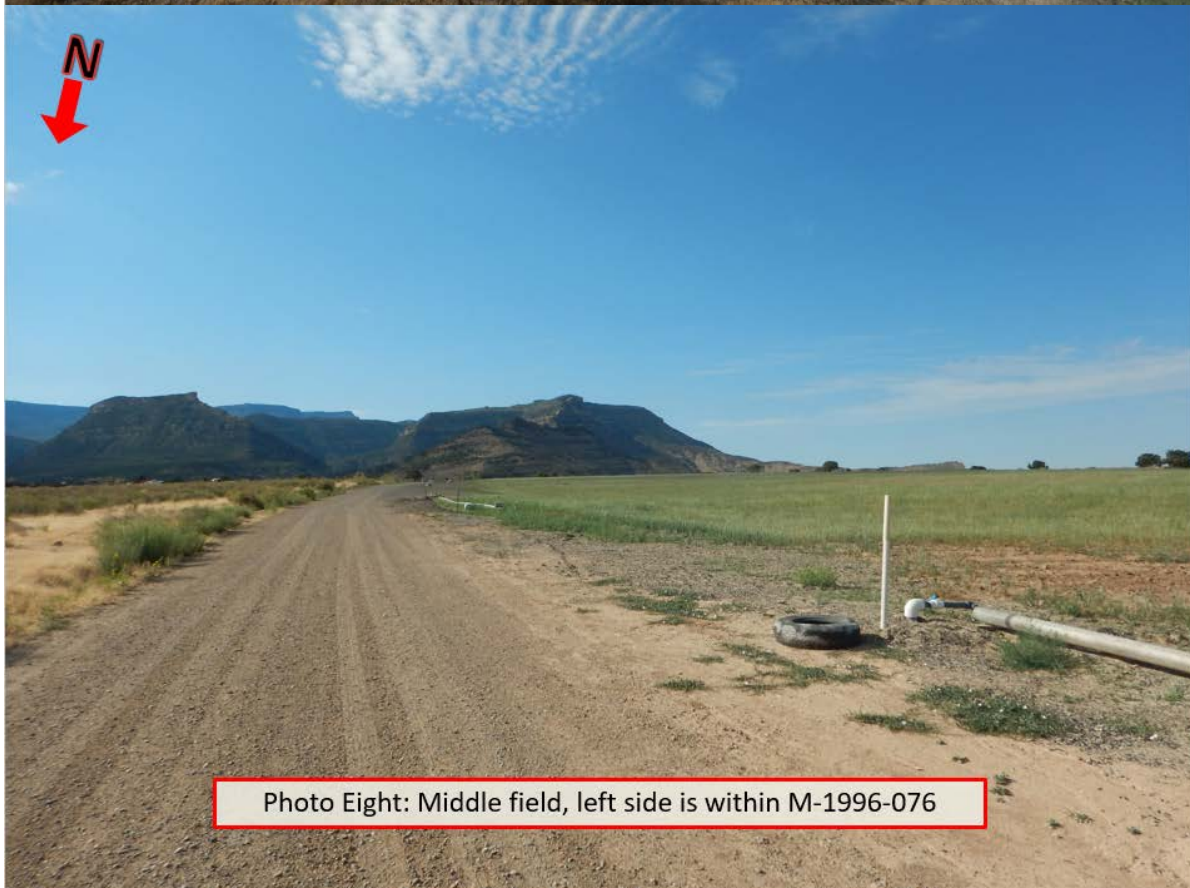


Photo Eight: Middle field, left side is within M-1996-076



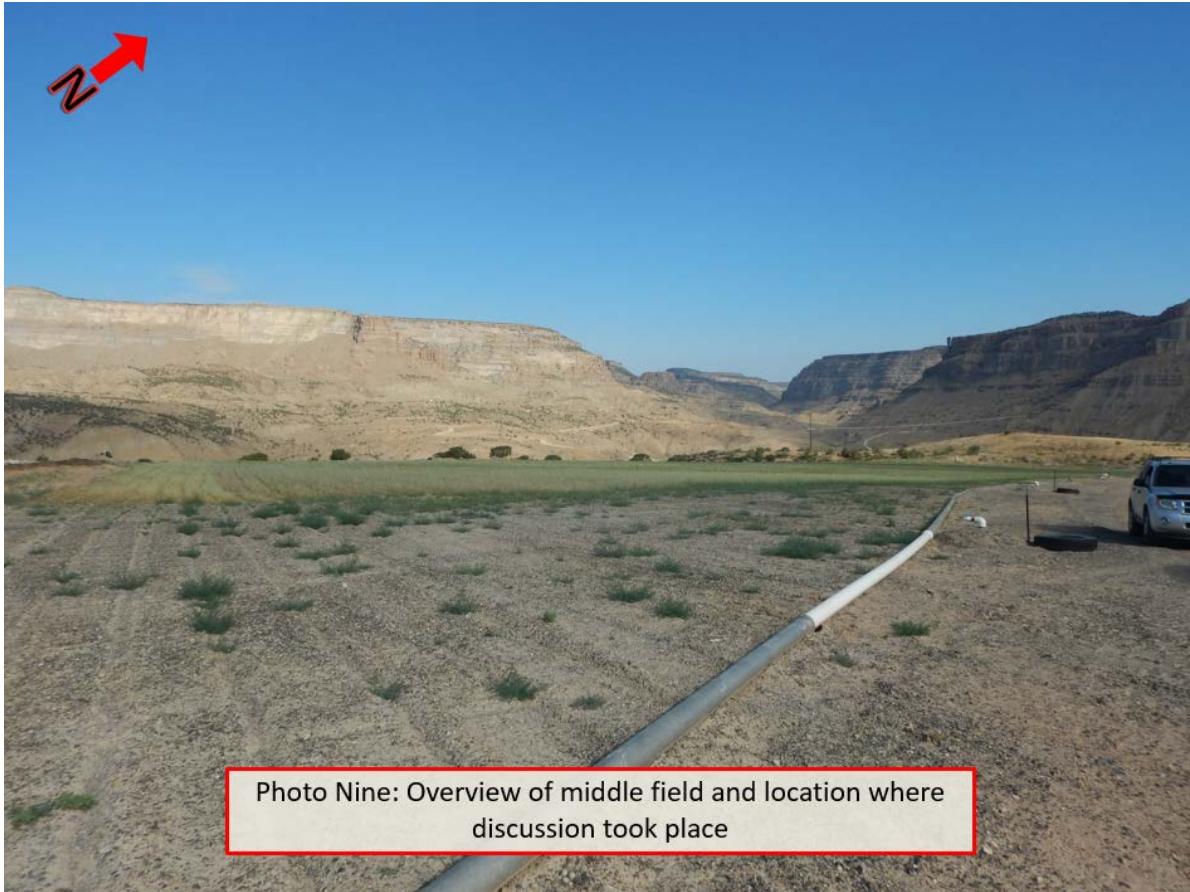


Photo Nine: Overview of middle field and location where discussion took place



