

South Crazy Mountains Land Exchange

Preliminary EA Review by Greg Scheeler

Contributions by: Rob Gregoire, Ian Wargo, and George Bettas

The intent of this EA review is to identify discrepancies I found within the USFS Environmental Assessment on the proposed land exchange based on my firsthand experience with the area. I started exploring and hunting these USFS lands in 2013 and spent a considerable amount of that time in Sections 8, 4 and 2 which are proposed to be swapped for other private land inholdings. I learned the details of this swap through conversations with Bob Dennee in 2016 when he was the acting USFS Realty Officer on this land exchange. While I can appreciate any efforts made to increase access in this mountain range, I cannot support the land swap as currently proposed. After a detailed review of the proposed EA, I found many statements misleading, false, or just omitted to make this land swap look like a win for public access when in fact this would be a terrible loss of habitat and access if approved. The landowners with interest in this land swap are the Crazy Mountain Ranch (CMR, owned by Phillip Morris Inc.), Rock Creek Ranch (RCR), and Wild Eagle Ranch (WER).

Issues and discrepancies identified within the EA:

Pg 3, Need for Action, 2: “The relocation and construction of large portions of the Cottonwood Lowline Trail #272 onto NFS lands and the acquisition of a trail easement to provide connectivity with the Rock Creek Trail and the consolidated NFS lands”

Argument: The proposed trail relocation will require an easement for S3 from CMR. This trail could be relocated currently without easements needed from CMR by following Trail #270, then west on Trail #272 across S9 (which follows road #199) and into current USFS owned S8. From S8 there is a 55' wide surveyed corner overlap which allows access into S4. From S4, the trail would go north into S33 if acquired from RCR. This path results in 3 miles of private lands crossed to reach USFS property at S8 with 900' of elevation loss and 600' elevation gain, an easy hike for most. This path into S8 & S4 is secured by USFS easements for Road #199 and currently utilized frequently by the public. The only land swap necessary to provide continuity between Rock Creek Trailhead and Cottonwood Creek Trailhead is the trade with RCR, not CMR.

The EA proposed Trail #272 would require a new easement from CMR across S3 and would take the public into much higher elevation before reaching USFS land. The proposed trail path would require 5.1 miles of hiking with 1200' elevation loss and 2100' of elevation gain just to get to the USFS boundary at S33, not an easy hike for most. That is 2.2 miles further across private lands, 1600' of additional elevation gain, and 700' of additional elevation loss to access our public lands!

Pg 3, Need for Action, 4: “To acquire access on the Robinson Bench Road No.193, through sections 20, 21 and 22, to the Rock Creek North trailhead”

Argument: I talked to Dee Closson with USFS on 10/8/19 and she confirmed that the USFS doesn't hold an easement for this portion of Robinson Bench Road #193. However, she also stated that there are some legal documents regarding maintenance on this road that would support a claim by USFS that this road is a county road and could not be legally blocked by CMR or RCR. This maintenance use could make a court case to open the road by USFS an easy win if it were ever blocked.

Pg 5, Forest Plan Consistency: “The proposed action is consistent with objectives, desired conditions, and criteria for lands offered by the U.S. for exchange and acquisition in the Forest Plan. Goals that specifically apply to the purposes of this proposed action are:

- Maintain and enhance fish habitat to provide for an increased fish population;

Argument: Fish habitat is abundant on S8 with the only self-supporting fishery available to the public within the Rock Creek watershed on USFS lands, fish species in abundance on S8 are Brook Trout and native Cutthroat Trout. Rob Gregoire documented the abundance of trout on S8 in September of 2019. He also found a complete lack of any species of trout above S8 in Rock Creek due to a 2 mile stretch that runs dry above S8.

Rob stated his results in an email to Mary Erickson. His findings were, “S8 is the only public land on Rock Creek with fish in it, and likely the only public land wild trout fishery in the southern Crazy Mountains. On 9/13/2019 my wife and I fished Rock Creek on S8 and found it to be a very good fishery. I averaged 1 fish every three minutes for the first 45 minutes. I stopped counting when I reached 28 fish. The fish were about a 50/50 mix of brook trout and native cutthroat. While it is hard to believe, Rock Creek appears to be fishless on all public land upstream of S8. I have fished Rock Creek on the public land below Rock Lake twice and never saw any indication that there are fish in there. Scott Opitz, fisheries biologist for Montana FWP, looked at their records and when they shocked that section in the 2000s they found zero fish. The upper reach might be barren because there is a two-mile stretch of Rock Creek between S8 and the upstream public land that regularly goes dry. On 9/17/2019 I visited this section. It had running water, but I found no signs of aquatic life such as mayfly and stonefly nymphs or caddis larva.”

Additional research by Rob provided details of the fish shocking records in Rock Creek:

On 10/6/1988, FWP shocked 4000' of water in S8 and found 19 Cutthroat. On 8/18/2008 FWP shocked upper Rock Creek in three different locations and found no fish. Robs recent fishing experience in S8 indicates the fishery has increased substantially since 1988 without any fish stocking programs.



Figure 1 Rock Creek through Section 8, Rob Gregiore 9/2019



Native Cutthroat in Section 8, Rob Gregiore 9/2019

Pg 5, Forest Plan Consistency: “The proposed action is consistent with objectives, desired conditions, and criteria for lands offered by the U.S. for exchange and acquisition in the Forest Plan. Goals that specifically apply to the purposes of this proposed action are:

- Provide habitat for viable populations of all indigenous wildlife species and for increasing populations of big game animals



Greg Scheeler 2014 Bull Elk packout and Habitat in Section 4

Argument: The public would lose the habitat currently available to them on S8, S4, and S2 with this swap. The habitat provided by these 3 sections is second to none within all of the USFS lands I’ve encountered. This picture (left) was taken in 2014 of a bull I harvested in S4 near the kill site, note the abundance of feed in the lush meadows. Both S4 & S8 have diverse ecosystems with aspens, streams and incredible forage for both wildlife and cattle. Elk, deer, bear and moose are in abundance alongside grazing cattle. Timber harvest is a viable option as well on these sections. The sections 11, 13, and 21 that would be gained from the swap with CMR are

identified within the EA as “unsuitable for timber harvest (pg 9)” and “are considered unsuitable for livestock grazing due to topography/vegetation type (pg 24)” by the CMR ranch manager himself. The swap with CMR is a loss of wildlife habitat, timber resources and grazing opportunities. This is also in direct conflict with the USFS MA 10 which states goals of “maintain healthy stands of timber,....optimize livestock grazing, and use timber harvest to create transitory livestock range.” (pg 5) The habitat in S8 & S4 simply cannot be lost as it cannot be replaced.



Photo of Section 8 habitat, from the corner overlap looking SW

Note: Pg 22 under Elk also cites: “High quality foraging habitat appears to be very limited and management actions that create such habitat (prescribed burning, timber harvest) designed

collaboratively with MTFWP could benefit elk and perhaps result in more elk available on public lands for wildlife viewing and hunting.”

Argument: Reducing the quantity of very limited high quality forage on USFS lands is not going to help with this problem. The USFS is directly going against a management goal to increase high quality habitat with this swap. No work is necessary to retain the habitat we have here; it is already as good as it gets!

Pg 5, Forest Plan Consistency: “The proposed action is consistent with objectives, desired conditions, and criteria for lands offered by the U.S. for exchange and acquisition in the Forest Plan. Goals that specifically apply to the purposes of this proposed action are:

- Provide additional secured public access to NFS lands

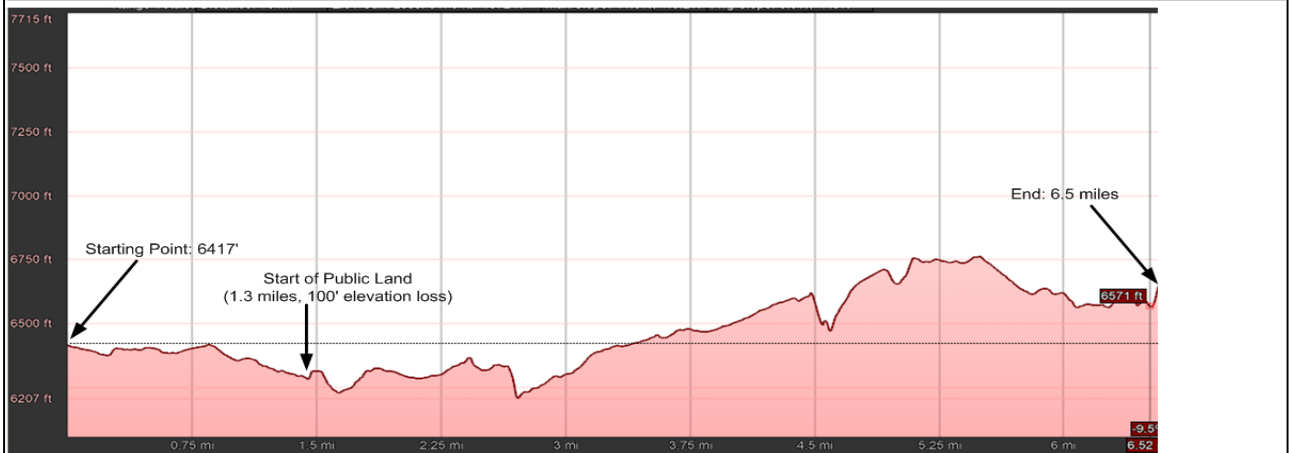
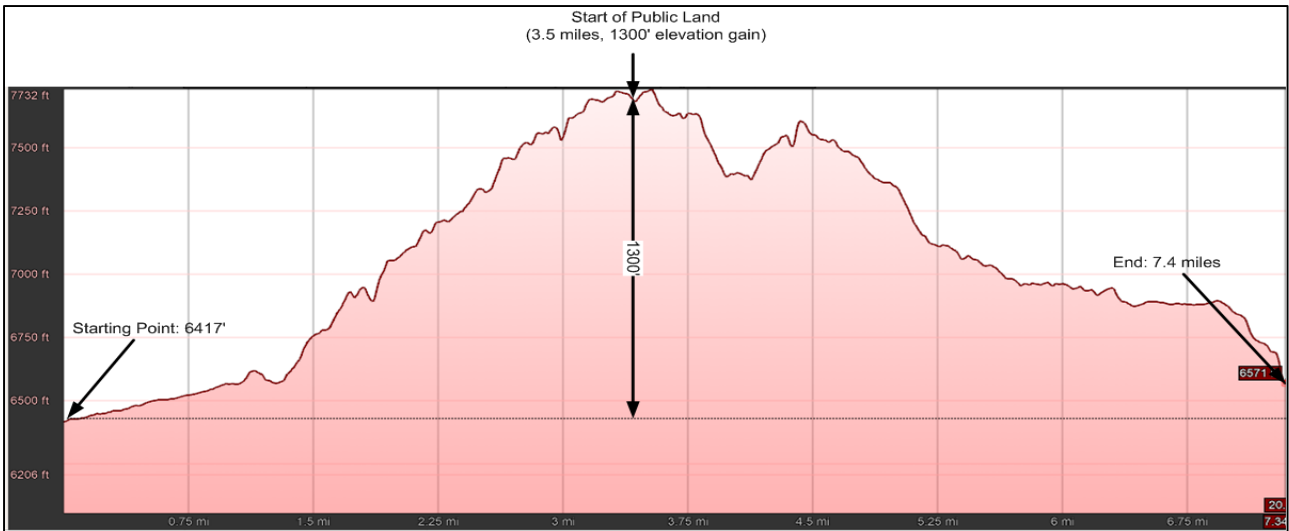
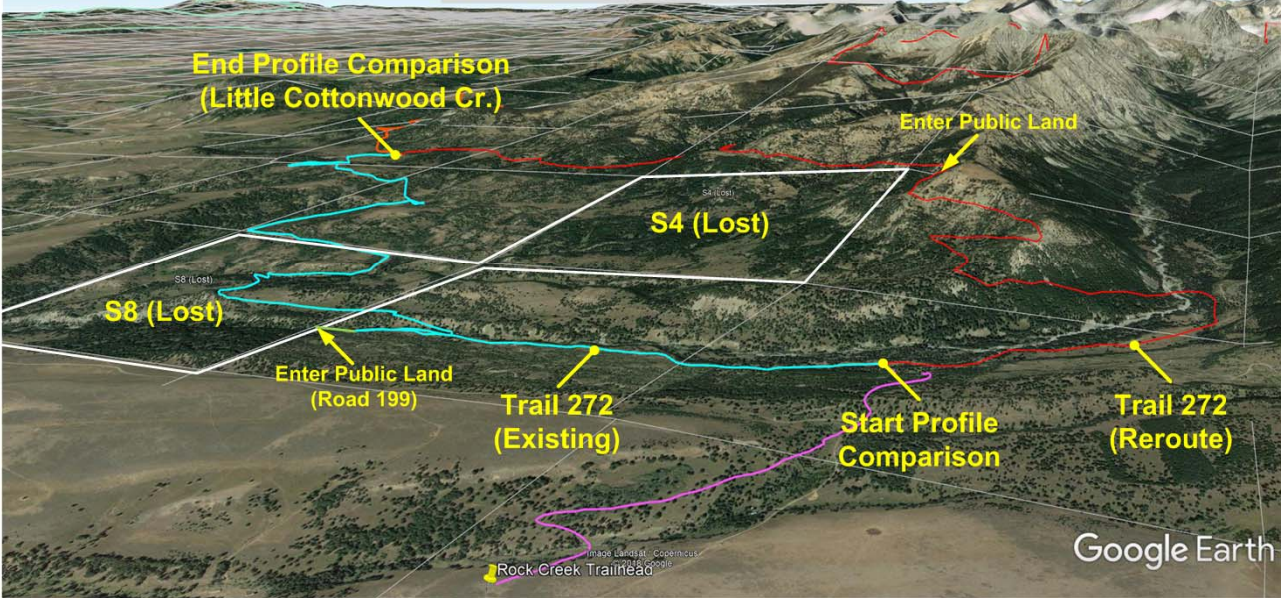
Argument: As discussed previously, the public would not be gaining additional public access, merely losing the existing perfected legal access into S8 & S4 and swapping this for a much longer and more difficult trail route to higher elevation habitat within S33. Trail #272 has legal access via USFS easements for Road #199 from the intersection of Trail #272 & #272 on S10, across S9, and into the USFS lands on S8 (Vol 45 Page 253 and Vol 45 Page 367 are the easement documents for Road #199 across Section 9 & 10 and can be found on file at the Park County Clerk and Recorder). The EA does confirm these easements exist for Road #199 across sections 3, 9 and 10 (pg 10), however, they never tie these easements to the public Trail #272 across these sections (which follows Road #199 for this stretch). The EA dances around the legal access we already enjoy to S8 & S4 on page 9, never connecting the two. Myself and others contacted Mary Erickson before the EA was released and provided detailed notes and documents regarding this legal access, yet it was still omitted from the EA. I feel this was a purposeful omission of data to make the deal sound sweeter than it truly is. To the untrained eye the EA implies that we don’t have access to the sections we are swapping, which is only true of S12 owned by RCR and S8 Owned by WER which would require a corner crossing to access.

Pg 10, Trail No 272: “This relocation is designed to reduce the amount of NFS trail on private (CMR) lands, while providing a reasonable connection for public access between Cottonwood Creek and Rock Creek Trail No.270 From the Rock Creek Trailhead in Section 15, visitors would head north to section 3 in which they would continue north on Rock Creek Trail No. 270 or west on the proposed Cottonwood Lowline Trail No. 272, spending less time on private land and more time on NFS lands”

Argument: As stated previously, this is a blatantly false statement. The amount of trail on CMR property actually increases by 2.5 miles! Even if the USFS removes Trail #272 from the map the easements for Road #199 would still allow the public to walk this road.

TRAIL NAME	STARTING LOCATION	ENDING LOCATION	CURRENT DISTANCE (MILES)	PROPOSED DISTANCE (MILES)	CUMULATIVE ELEVATION GAIN (ft)	CUMULATIVE ELEVATION DROP (ft)
TRAIL 270	ROCK CREEK TRAILHEAD	INT. TRL 270 & 272	1.5	1.5	420	630
EX. TRAIL 272	INT. TRL 270 & 272	EX USFS BOUNDARY S8	1.4	-	150	270
PROPOSED TRAIL 272	INT. TRL 270 272	New USFS boundary S34	-	3.6	1650	530
TOTALS: EX TRAIL 272	ROCK CREEK TRAILHEAD	EX USFS BOUNDARY S8	2.9	-	570	900
TOTALS: PROPOSED TRAIL 272	ROCK CREEK TRAILHEAD	New USFS boundary S34	-	5.1	2070	1160

Map for elevation profile of existing and proposed Trail 272



Elevation plots of Ex Trail #272 and the proposed route, Rob Gregoire

The above Google Earth trail profiles show the difference in terrain clearly, access to the public lands is being increased in both distance and difficulty! The proposed route of Trail #272 is an increase of 2.2 miles with 1500' more vertical gain and 600' more vertical loss to access public lands (cumulative vertical gains and losses). The "improved location" of this trail is also reference on page 16 of the EA, fueling the fire that the EA is a biased report with a desired outcome. Walk in access should be kept to a difficulty level so that people of all ages can reasonably enjoy their public lands. Trail locations should also be chosen so retrieval of game is possible with a backpack or game sled and not limited to stock users.

Pg 13, Recreation Uses and Access- Dispersed Recreation – Federal Lands: "Dispersed overnight camping is not common"

Argument: No camping is allowed at the Rock Creek trailhead so dispersed camping is actually a primary use on these federal lands, particularly Section 4 & 8. Big game outfitters currently utilize Section 4 & 8 and setup wall tents for the duration of their hunts.

Pg 16, Effects of Alternative A – No Action: "United states would have no recorded easement for this trail (272)"

Argument: We have recorded easement for the route this trail follows via Road #199 through S10 & S9. We don't need the trail name in the easement to use this public access route.

Pg 16, Effects of Alternative B – Proposed Action: "The proposed exchange would provide public access to two high elevation mountain lakes, Smeller and Rock Lake, which are currently inaccessible to the public."

Argument: There is no history of the CMR restricting access to either of these lakes, the public has been recreating on these uninhibited forever (as far as I know). I don't know about the status of the trails leading to these lakes, if they have perfected easement or not, but historic use is on our side and there is no evidence of permissive use required from the landowner. These sections are not posted by the CMR and Trails #270 & #220 are considered legal public access across these sections by the USFS. If CMR were to ever attempt to close the trails historic use is well documented. The lakes would also be accessible following the creek beds and staying within high water marks per Montana stream access laws.

Additional thoughts and findings:

The newly placed signs at the intersection of Trail #270 & #272 don't even show the option to follow Trail #272 into S8 & S4 (see image below). Why did forest service purposely excluded a legal access trail

in the Crazy Mtns on a brand new sign? I don't think they ran out of money creating new signs for all of the perfected trails we have in this mountain range.



Current sign at Intersection of Trail #270 & #272, Rob Gregoire 9/19 USFS sign for Trail #272 by S8, Greg Scheeler 9/19

You'd have to hike all of the way to the brown gate where Trail #272 intersects the east edge of S8 to even find a sign that indicates Trail #272 ever existed. I took this picture (above right) about month ago and I was honestly surprised to see that someone hadn't removed it yet. This sign clearly indicates historic use of Trail #272, and yet the new sign at the intersection completely ignores this historic trail that is shown as public in the current Gallatin National Forest North Map.

Through my research and conversations with many concerned individuals the issue that kept surfacing was that this proposed exchange should instead consider each land exchange with these three ranches on their own merit. Meaning, Wild Eagle Ranch, Rock Creek Ranch, and Crazy Mountain Ranch exchanges all had to pass this EA process when evaluated on an individual basis. I asked Dee Closson about that change and she said it was for streamlining the process. While efficiencies are gained with a single land exchange proposal, details of each particular exchange can be lost in the process. I believe the public deserves the full EA review process for each land swap as these three ranches are all trying to

exchange different properties scattered across a large area, each with unique characteristics and varying public access.

Wild Eagle Ranch exchange: T2N, R12E, Section 8 for T2N, R11E, S1. This land exchange in itself is a great win for the public. USFS gains S1 that allows for legal access to S12, creating a contiguous three section area for public recreation, hunting, grazing, and timber harvest if pursued. We also don't lose anything as we cannot currently access the USFS S8 that WER would obtain. Both sections offer similar habitat, timber, and grazing considerations in this swap. This exchange has merit and is an easy win.

Rock Creek Ranch exchange: T2N, R11E, S2 & S12 for T3N, R11E, S31 & S33. This land exchange is also good deal for the public. We don't have access currently to S12, but S2 does have access and is enjoyed by many hunters and some hikers. Sections 31 & 33 would both be accessible with this exchange and the habitat, timber, and grazing are generally high-quality and very similar to S2 & S12. In addition, we could access the rest of the USFS lands easily through S8, S4, and into S33 if this land swap went through. However, the new proposed route of Trail #272 makes accessing S33 & S31 quite difficult and the trail placement is right in the middle of the best big game habitat. A new Trail #272 location through S8 & S4 would benefit this exchange greatly.

Unfortunately, we also lose the only good access to S1 and many of the benefits from the swap with WER if the swap with RCR also occurs. It's a tradeoff, but I believe both WER and RCR trades have strong merit. The USFS has worked hard to find a solution that would increase public access in the South Crazy Mtns. I think the combination of the WER and RCR land exchange provides that win-win solution for both the public and USFS.

Crazy Mountain Ranch (AKA, Phillip Morris Inc.) exchange: T2N, R11E, S4 & S8 for T3N, R11E, S11, 13, & 21. Let's not forget that Phillip Morris Incorporated formally changed the name on this property from Phillip Morris Inc. to Crazy Mountain Ranch sometime in the last 5 years, and I would bet that public image during this swap might have influenced that decision. This is the swap that I think could not pass the USFS process when standing alone. As I've pointed out throughout this report, we are losing a lot and gaining very little in return, hence the reasoning for trading two USFS sections for three CMR sections. There is zero comparison with the habitat, timber, grazing, access, and even fisheries with this exchange. To sweeten the deal, the CMR is allowing for some additional easements and even throwing in an extra section of extreme talus-covered terrain in an attempt to privatize the two best sections of habitat the public currently owns in this entire mountain range.

I believe the monetary value of what we are losing is still considerably larger than what we are gaining. How many private buyers are in the market for 1280 contiguous acres of ideal big game habitat with legal vehicular access, water rights, timber stands, thick forage, and surrounded by a large private ranch acting as a big game sanctuary? Now how many buyers are looking for three different sections of land completely surrounded by USFS, none of which are connected, two with a defined public trail, which are almost completely void of any game, timber, or vehicular access? I argue that the USFS appraisal will say one thing, but the open market would prove another. Nothing about this exchange is fair, it cannot pass

the USFS review process on its own merit, and the public cannot accept this part of the proposed land exchange.

The exact details of the additional easements the CMR would grant the USFS for this exchange are interesting. The road leading to the existing trailhead is Robinson Bench Road, and USFS claims no permanent easements exist for the USFS across sections 20, 21, 22 & 15 (CMR & RCR Property). However, this is not unusual and only becomes an issue when the landowner gates off a road claiming its private. The Park County Website indicates that Robinson Bench Road is currently maintained by the county and has been historically. Continuous county maintenance and unobstructed public use are two of the main arguments that define a road as public and would make this an easy win in court if the road were to be blocked by the landowners in the future. I asked Mary Erickson about the new easements for USFS maintenance roads during the public comment meeting in Livingston on 10/23/19. I specifically asked her how the USFS has maintained all of their trails in this area historically, as separate USFS maintenance roads to USFS trails are not common within USFS lands. She stated that the USFS has used the existing Trail #270, Trail #272, and Road #199 for all maintenance and law enforcement issues. The USFS has successfully maintained this area for 100+ years from the existing roads and trails. Additional easements for Robertson Bench Road or new maintenance roads would be nice but are not a necessity and shouldn't be allowed to as leverage the USFS into proceeding with the CMR land exchange.

The public deserves more alternatives within the EA for commenting, but none were offered. This process has been ongoing for 15 years with the landowners and the USFS behind closed doors, and just now are we being made fully aware of this huge exchange with just 45 days to research and comment. The USFS seems to believe they've spent too much money, too much time, and worked too long with the landowners to not follow through with the proposal they created. However, they were spending the public's money all of those years, and 15 years is a blink of an eye when the results will last into perpetuity. If this exchange goes through the USFS will have zero leverage left. I believe the public deserves more options than do nothing (Alt. A) or a bad land exchange that includes all three landowners (Alt B). These landowners don't care about more money, just more land, so we need to think long and carefully before playing the only hand we hold.

Preferred Alternatives to A or B:

Alternative C: Complete the land swap with WER only creating a three section contiguous area with public access. A net gain of two sections for public access, S1 & S12.

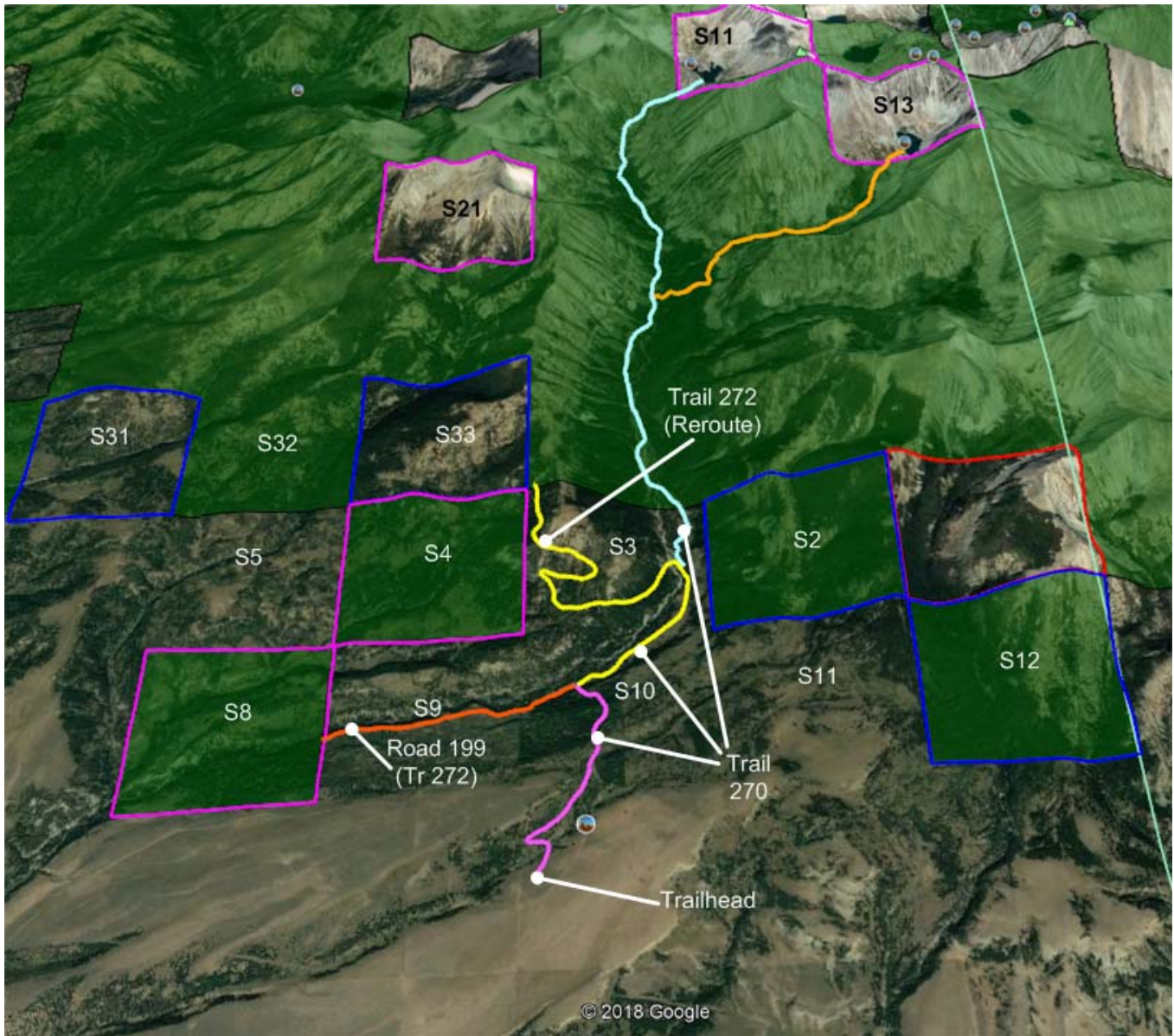
Alternative D: Complete the land swap with WER and RCR only. This is also a new gain of two sections for access, S1 and S33 (or S31). USFS could re-route Trail #272 into S8, S4, and S33 and connect it to Cottonwood Road without putting the public trail way the hell up in the steep country with tons of elevation gains and losses. The route I've proposed for a new Trail #272 really is the best path for multiple users, and it only takes an exchange with WER and RCR to get it. Also, this is the best option we can realistically hope for as it provides a win-win for the USFS and the public.

Alternative E: This is my last ditch attempt to improve on a bad land exchange that includes Phillip Morris (CMR). This alternative would require CMR to allow for the relocation of the trailhead closer to USFS lands. Between existing easements for Road #199 and an agreement with CMR, the public could drive all of the way into Section 3 and establish a trailhead at the border of the USFS, just like 95% of the other USFS trailheads. This really is a unique trailhead as we don't reach public lands for 3 miles in any direction, and CMR easements are all that we would need to move the trailhead closer to the USFS boundary. If CMR gets the exchange they want as proposed we will be making a long trek to the public boundary each and every time we use these trails, forever! I throw this one out as a last resort option, if the whole deal is contingent on the CMR exchange we can at least get the trailhead moved closer to better access the distant lands we acquired.

Finally, I would like to praise the USFS for their hard stance with landowner Mack White on the north end of the Crazy Mtns that resulted in secured access for the public after years of hard negotiations. The USFS stuck to their guns and made that deal a great win for the public. Now again the USFS can score an overwhelming victory by moving forward with the RCR and WER land exchanges and not proceeding with the CMR land exchange.

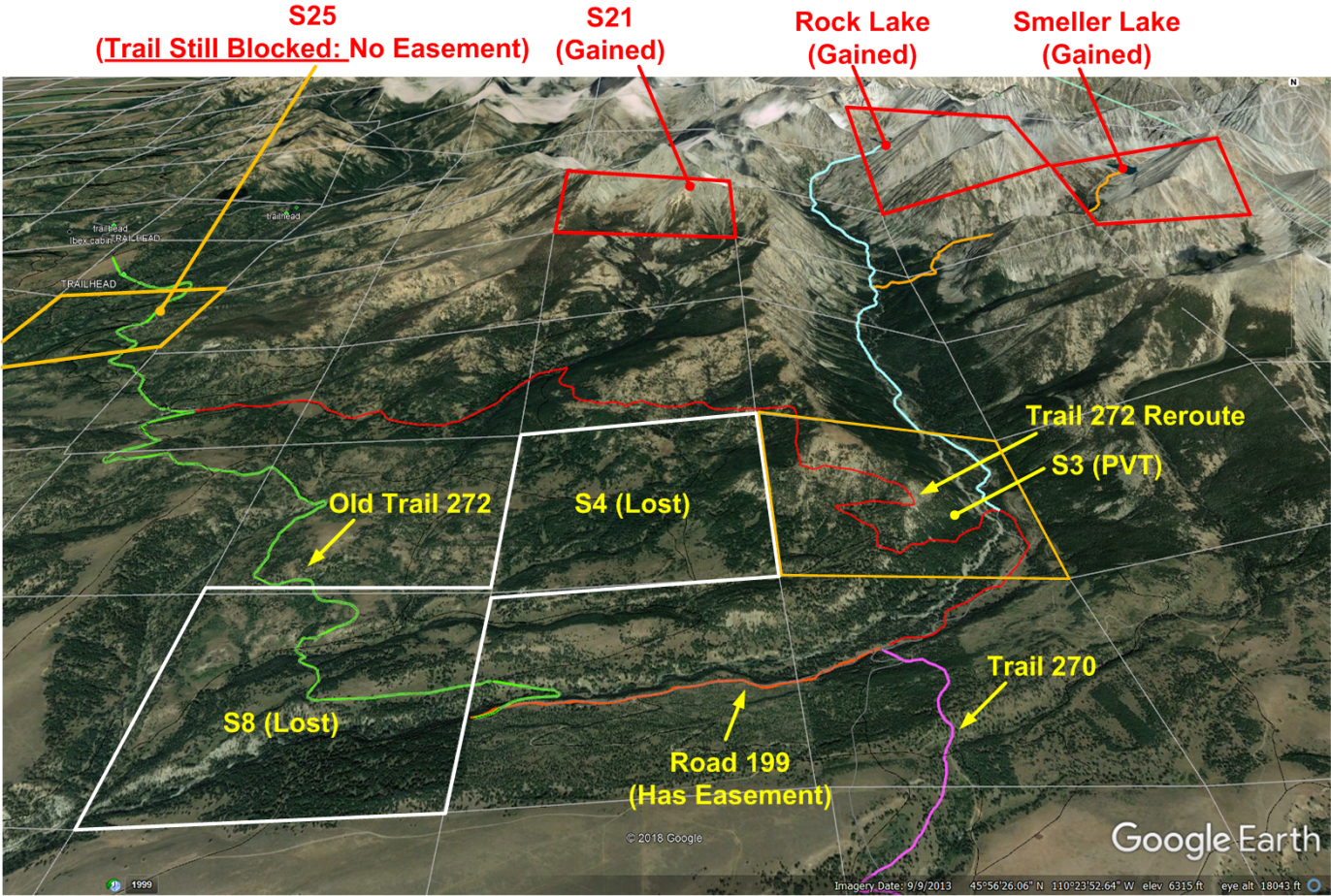
Respectfully,

Greg Scheeler

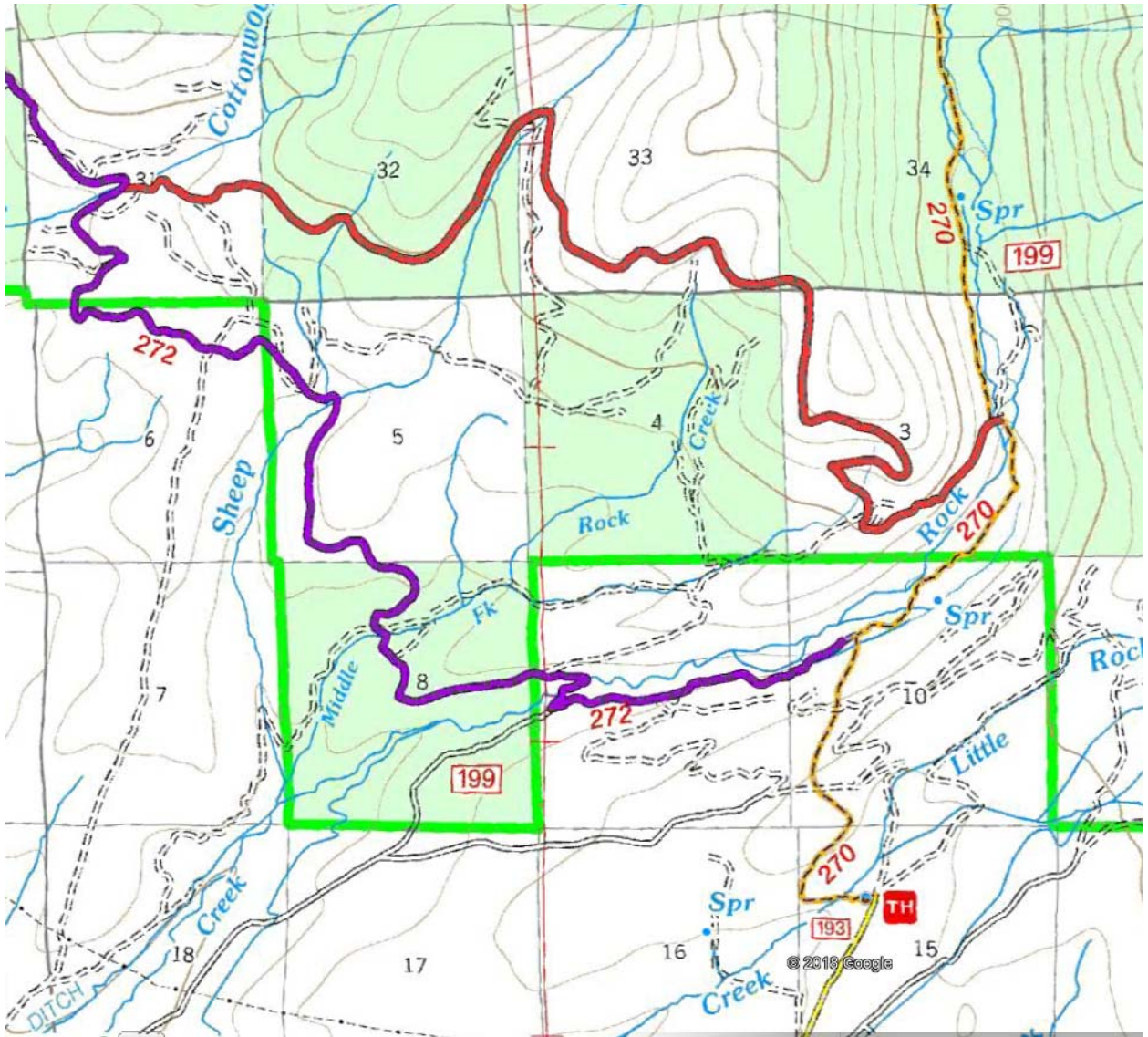


Proposed Land Exchange Map:

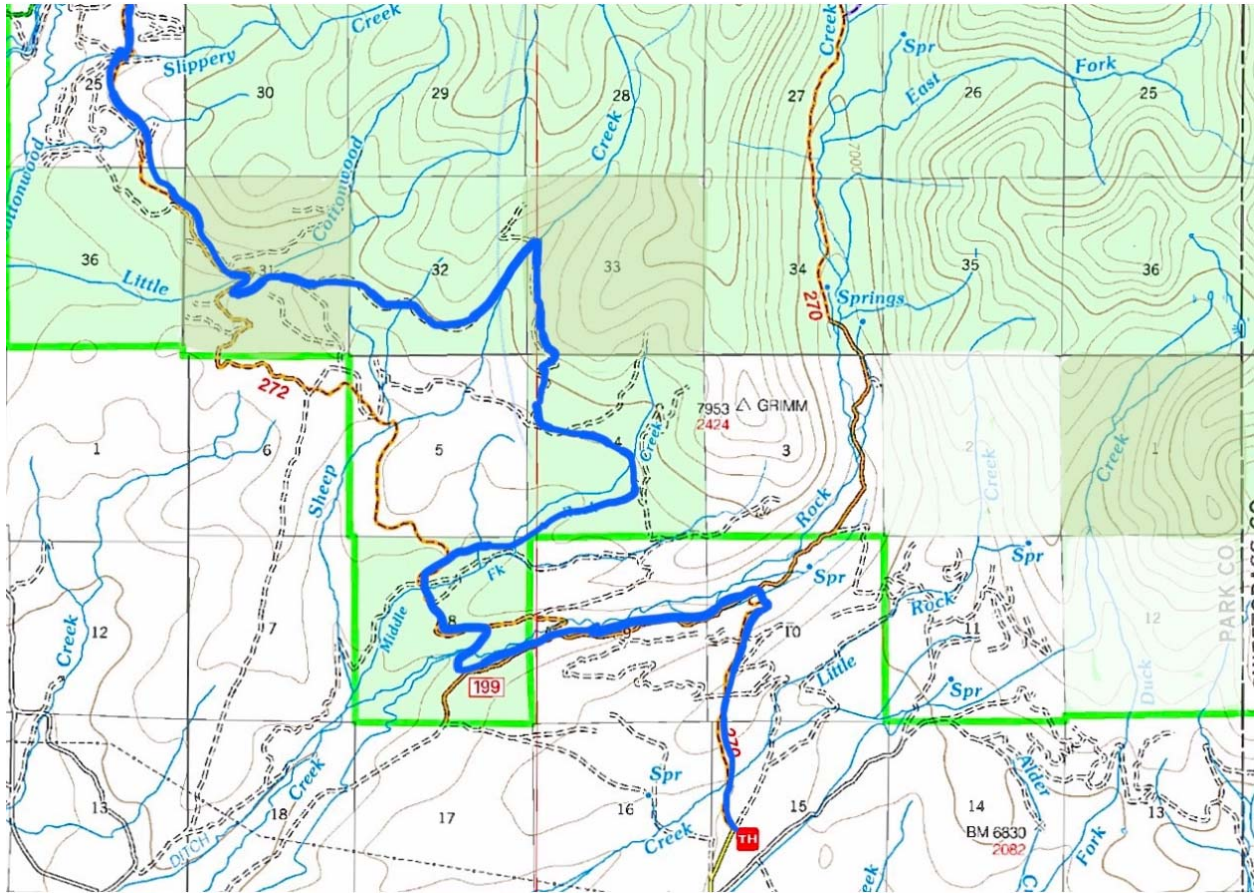
1. Rock Creek Ranch (RCR) Swap in Blue
2. Phillip Morris (CMR) swap in Pink
3. Wild Eagle Ranch (WER) swap in Red
4. Existing USFS Lands filled with Green



Phillip Morris (CMR) Proposed Land Exchange Map



USFS Map of proposed new Trail #272 location (red) and Existing Trail #272 location (purple)



A map of the best outcome from this land exchange, denying the Phillip Morris Ranch land exchange and proceeding with Rock Creek and Wild Eagle Ranches, note the new Trail #272 location through S8 & S4