Sent via Comment Submission Form

November 18, 2019

Custer-Gallatin National Forest
Forest Supervisor Mary Erickson
PO Box 130
Bozeman, MT 59771

Re: Preliminary Environmental Assessment, South Crazy Mountains Land Exchange #56687

Dear Ms. Erickson:

WildEarth Guardians respectfully submits the following comments on the Preliminary Environmental Assessment ("PEA") for the proposed South Crazy Mountains Land Exchange ("SCMLE") between three private entities and the Custer-Gallatin National Forest.

The National Environmental Policy Act (NEPA) is designed to foster informed and transparent decision-making. 40 C.F.R. § 1500.1; *Robertson v. Methow Valley Citizens Council*, 490 U.S. § 322, 349 (1989). NEPA requires BLM to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment," 40 C.F.R. § 1500.2(d), and to use high quality information because "[a]ccurate scientific analysis. . . and public scrutiny are essential to implementing NEPA," Id. 1500.1(b). To these ends, courts have held that environmental review documents must be written in plain, clear language and "supported by evidence that the agency has made the necessary environmental analyses." *See, e.g., Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1160 (9th Cir. 2006).

A. The deciding official needs to consider each of the three land trades separately.

According to the PEA, "each component of the South Crazy Mountains Land Exchange will be completed on an equal value basis (as required by FLPMA, Section 206)." PEA, 6. We agree with this statement that each of the three components must separately comply with the Federal Land Policy and Management Act's land exchange provisions. This means, however, that each of the components must stand on its own and individually meet the FLPMA requirement that the "public interest will be well served by making that exchange" and that "the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired." 43 U.S.C. §1716(a). This proposal should have been analyzed as three separate land exchanges with three separate environmental assessment so that the deciding official, and the public, can better determine whether each SCMLE component satisfies FLPMA's requirements.

B. The PEA failed to consider reasonable alternatives.

The range of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. NEPA requires BLM to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. *See* 40 C.F.R. §§ 1502.14(a), 1508.25(c). "An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action." *Nw. Envtl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). The consideration of more environmentally protective alternatives is also consistent with the National Forest Management Act ("NFMA").

Further, in defining what is a "reasonable" range of alternatives, NEPA requires consideration of alternatives "that are practical or feasible" and not just "whether the proponent or applicant likes or is itself capable of carrying out a particular alternative"; in fact, "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Questions 2A and 2B, available at https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf; 40 C.F.R. §§ 1502.14, 1506.2(d). The Ninth Circuit Court of Appeals has previously overturned a land exchange for failing to consider an adequate range of alternatives. *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999).

Reasonable alternatives to the proposed SCMLE must be evaluated. One such alternative is a land exchange that includes offered and selected lands from Rock Creek Ranch I, Ltd., and Wild Eagle Mountain Ranch LLC but not the offered and selected lands from Crazy Mountain Ranch ("CMR"). Because the proposed SCMLE would be processed as three separate transactions anyway, there is no reason that this alternative is not feasible. This alternative would further the Custer-Gallatin National Forest Plan goal of consolidating NFS lands and result in greater management efficiency by reducing boundary line maintenance and necessary signage. It would also prevent the trading away of two parcels of important big-game habitat that is valued by hunters.

C. The PEA failed to take a hard look at the quality of recreation opportunities under the proposed action vs. the no action alternative.

NEPA dictates that an agency take a "hard look" at the environmental consequences of a proposed action and the requisite environmental analysis "must be appropriate to the action in question." *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the "hard look" required by NEPA, an agency is required to assess impacts and effects that include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8

Here, the PEA's cursory discussions of both the current conditions of dispersed recreation and the effects the proposed action would have on dispersed recreation do not meet the standard of a "hard look" under NEPA. The document offers no data or other attempt to quantify public use of the current federal lands for dispersed recreation. Instead it vaguely states that "[d]ispersed recreation

primarily consists of day use big game hunting, fishing, hiking, backpacking and wildlife viewing." PEA, 13. No evaluation of the quality of quantity of these current recreation uses is offered. The statement that "[t]here are no inventoried dispersed campsites within the Federal parcels and dispersed overnight camping is not common," is of little value, as one would expect that by their very nature most dispersed campsites on the Custer-Gallatin National Forest are not inventoried.

In discussing the effects of the proposed action on dispersed recreation the PEA offers four short paragraphs, much of it also vague, and potentially misleading. The first paragraph notes that public access would become available for several forms of dispersed recreation and that "some" of the acquired lands would offer mountain bike and motorcycle riding opportunities on existing trails. It also states that the public would gain access to Rock and Smeller Lakes for fishing and dispersed camping. This paragraph is silent as to the quality of the dispersed recreation experiences available post-trade. The relevant question is whether the proposed action would improve recreation experiences. Based on letters to the editor in local newspapers it appears that hunting and fishing experiences would not be improved with the land exchange as the federal parcels offer superior big game hunting opportunities to the two CMR-offered parcels. See https://www.bozemandailychronicle.com/news/environment/hunters-anglers-question-crazy-mountain-land-swap/article_c7a01b4f-2e03-5ef4-8c8b-033a6809e0bc.html (last accessed November 18, 2019). It appears that the fishing opportunities provided by Rock and Smeller Lakes are not of much value, either, as the lakes require regular stocking of fish. See https://www.livingstonenterprise.com/content/only-half-story-crazies-land-exchange (last accessed November 18, 2019). The PEA fails to compare the quality of the fishing offered by the no action alternative vis-à-vis the proposed action. *See id.* The PEA also fails to consider the likely effects of dewatering Rock Lake by CMR for irrigation. While the PEA notes that "CMR would retain its water rights for the volume of water from full pool to the bottom of the outlet tunnel," it does not identify the amount of water that would remain in the lake below the bottom of the outlet tunnel or whether that amount of water would support fish. *See* PEA, 8.

The third and fourth paragraphs of the discussion of the effects of the proposed action on dispersed recreation are misleading at worst and reveal a failure to take a hard look at best. The third paragraph states the proposed land exchange "could increase recreational opportunities for the three permitted outfitter/guides that operate in this area." This statement may be misleading because hunter/angler accounts of the offered and selected lands indicate that the offered CMR parcels offer much less for sportspersons than the parcels CMR has selected to acquire in this trade. *See* https://www.bozemandailychronicle.com/news/environment/hunters-anglers-question-crazy-mountain-land-swap/article_c7a01b4f-2e03-5ef4-8c8b-033a6809e0bc.html. It's clear, however, that the Forest Service either did not contact the three permitted outfitter/guides to try to understand whether the proposed trade would increase their opportunities, or it did not bother to include its findings in the PEA.

The fourth paragraph's single sentence, that "MFWP would continue to offer hunting opportunities on public lands in this area as part of their management of big game," is rather meaningless, as it does not address the quality of hunting opportunities in the project area.

D. The PEA did not address whether the remains of a former Ranger Station qualifies as a cultural resource worthy of protection under the National Historic Preservation Act ("NHPA").

It is our understanding that the Forest Service once operated a ranger station or guard station on Middle Fork Rock Creek, along what is now Trail 272, on Section 8 of T2N R11E, a parcel proposed for trade to CMR. Unfortunately, there is no discussion of whether the remains of this station qualify for protection under the NHPA. The Forest Service must address this issue prior to any decision regarding the proposed trade.

E. Conclusion

Thank you for the opportunity to provide our comments on the PEA for the South Crazy Mountains Land Exchange proposal. We believe the current proposed action is not in the public interest and that the CMR portion of the proposal should be dropped from consideration.

Sincerely,

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