

January 20, 2021

Objection Reviewing Officer
USDA Forest Service
Northern Region
26 Fort Missoula Road
Missoula, MT 59804

Subject: Objection to Rock Creek Ranch and Wild Eagle Mountain Ranch Components of South Crazy Mountains Land Exchange

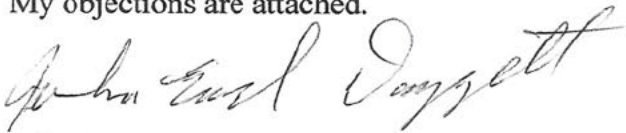
Mary Erickson – Responsible Official
Forest Supervisor
Custer Gallatin National Forest
Yellowstone Ranger District

Objection Reviewing Officer:

I object to the Rock Creek Ranch (RCR) and Wild Eagle Mountain Ranch (WEMR) components of the proposed South Crazy Mountains Land Exchange. My objections are specific to the concerns I made in my comments to the Preliminary Assessment (PA) for this project. I did not find that the "Finding of No Significant Impact (FONSI), Environmental Assessment (EA) and Appendix A: Summary of Public Comments" addressed all of my concerns.

Another observation I have reviewing these documents is that I found them confusing to some degree. The EA addresses all three components of the South Crazy Mountain Land Exchange, including the Crazy Mountain Ranch (CMR) component but the FONSI is just for the RCR and WEMR components. Interpreting both documents together for just the RCR and WEMR components could have been clearer.

My objections are attached.



John Daggett



Attachment: Objections to Rock Creek Ranch and Wild Eagle Mountain Ranch Components of South Crazy Mountain Exchange - January 20, 2021

1. The Environmental Assessment (EA) does not adequately address loss of valuable wildlife habitat, primarily elk habitat on federal land. My first comment to the Preliminary Assessment (PA) raised this concern. The EA tries to answer the elk habitat issue on page 31. It states "There would be a net increase in potential habitat with the land exchange." There is no analysis provided to support this. The statement "The conservation easements would retain habitat values on a majority of the acres to be exchanged." may be true for all land which includes both private and public, assuming that conservation easements are placed. It does not address the loss of elk habitat on federal lands. The elk habitat going into private ownership most likely would not be accessible to the public. The EA did not provide a parcel analysis for these two components for elk. I requested in my PA comments that this be done for all components. The EA did provide a parcel analysis for grazing, which I tried to use for elk, assuming land suitable for grazing has higher wildlife value than land that doesn't. Based on this, it appears that for these two components of the exchange, federal lands would potentially lose approximately 640 acres of good wildlife/elk habitat. Most of this appears to be in Section 1, T 2N, R 11E. I realize that cows are not elk but the EA does not contain an analysis by wildlife specialists evaluating this.

As my second comment to the PA states, trading away good elk habitat for shale rock is not a desirable outcome to this land exchange. It is well known that real estate values are higher for lands that have high wildlife value, particularly elk, which my PA comments state. So if a parcel analysis wildlife value is not done, how is the federal appraisal

process going to take this into account? All the EA states is that elk habitat may increase (with no backup analysis) over the entirety of the lands, both federal and private, being considered for exchange.

Keeping more federal lands with elk habitat, such as parts or all of section 2, T2N, R11E, may help since this section would be part of a block created by acquiring section 1, T2N, R11 E.

2. My comment No. 3 expressed my concern with private encumbrances (mineral owners) that private lands being conveyed have to federal ownership. These two components are discussed on page 9 of the EA. It states that “WEMR has agreed to diligently pursue the acquisition of the outstanding mineral interest in section 1, T 2N, R 11E. for conveyance to the United States.” If this doesn’t happen, “The Forest Service may elect to reserve all or certain portions of the federal mineral estate.” My objection to this is the word “may” and should be defined more definitively in the EA before a decision is made. The public only has the chance to evaluate this in the objection process to the EA and at this point it is not definite one way or the other. As my PA comment stated, the Forest Service should not be exchanging its lands with all mineral rights for lands that do have mineral owner encumbrances if at all possible. Mineral rights on the federal lands to be conveyed need to be retained if not.
3. The EA discusses recreation and access in section 3.1. These two components of the exchange appear to just acquire the 100 foot segment of the Robinson Bench Road No. 193 in section 22, T2N, R11E. Is this correct?

This access section does not recognize the Forest Service and public's right to use Cottonwood Lowline Trail No. 272 and Rock Creek North Trail No. 270 where it does not have its own recorded easements even though Northern Pacific deeds and prescriptive easements over many years of agency maintenance and public use do exist.

4. Section 3.6 addresses historic features and my PA comment 6, refers to the Forest Service's historic trails. Their construction dating back to shortly after the founding of the Forest Service and early years thereafter. These trails enabled the agency to start its historic work of managing the nation's National Forest lands. The EA does not mention the Forest Service trails at all for evaluation as historic but mentions an old water ditch that does have historic value. If an old water ditch has historic value, then these old trails which have been part of the National Forest Trail System for over a 100 years in some cases should have some historic value as my PA comment stated.
5. My PA comment 10 asked about the Conservation Easements to be placed on the federal parcels post land exchange and what guarantee the Forest Service has that this will happen. Your answer in "Appendix A: Summary of Public Comments" in part G of Theme 1 Process implies in the last sentence that the "Forest Service would work with the Office of General Counsel to determine remedies if landowners did not follow through with terms set forward in the agreement." This implies a written agreement of some kind that would be enforceable in a court. The term "agreement" is unclear. Is this agreement a verbal promise or is it part of the deed transfer? This is important since the Conservation Easements are being used to sell the exchanges to the public. Couldn't the

Forest Service place these easements on the Forest Service lands before they are conveyed? You are doing that for a cultural site and wetland.

6. The FONSI states in (6.) that this project does not set a precedent. In my comments to the PA, I discuss the Forest Service's unwillingness to defend its own trails even though the agency used the Northern Pacific easements to litigate the Big Timber Canyon access in the early 1950's and has used its prescriptive rights elsewhere. The EA mentions the Big Timber Access on page 2 of the EA; however, it does not mention the Northern Pacific public easements and why they can't be used now. Not defending access in all its forms does create a precedent. This creates an incentive for landowners to block historic Forest Service access, including the agencies own trails and ask for land exchanges or trail reroutes in return for the agency and public to get some type of access back. Closed traditional public access puts a great amount of public pressure on the agency to solve as quickly and easily as possible. Unfortunately the result is the Forest Service is unwilling to use all the legal tools available to it through its federal authorities because it takes too much time or the individual blocking the trails is too politically connected and the agency doesn't want to deal with this. This results in leverage for the people blocking access and this leverage is used to promote land exchanges or trail reroutes that favor them. A de-facto "Exchange First Policy" seems to be what the Forest Service uses to solve difficult access problems in the Crazy Mountains. Everyone knows it including the people who block access so it is precedent setting. Land acquisitions through purchase are never seriously considered because the quick fall back is "How about a Land Exchange". Yes, land purchases take time because there has to be willing sellers. However, they do happen and have happened even in the Crazies as the EA states on

page 3. This de-facto “Exchange First Policy” created by the agency’s failure to defend its access rights and develop a long term acquisition plan is precedent setting.

7. We know there are more exchanges being studied now or have a high probability of being proposed in the Crazyes. There is the third component to this exchange and the much publicized and promoted Crazy Mountain East Side Exchange. It only seems logical that future exchange proposals will happen with the public’s pressure for more public access and the Forest Service’s “Exchange First Policy”. Therefore the statement in No. 7 of the FONSI, “There are currently no proposed projects that are considered reasonably foreseeable future actions.” isn’t correct. All of these would most likely exchange lower elevation federal lands for higher more rugged private lands, moving higher wildlife value lands into private ownership. This goes against the Forest Service’s stated goal of conserving valuable wildlife habitat. These exchanges would also reduce the effective footprint of the National Forest in the Crazy Mountains. What long term effect does this have and is this in the long term national interest? These are two cumulative impacts that are obvious and need addressed.