

South Crazy Mountains Land Exchange Environmental Assessment and Draft Decision Notice

Custer Gallatin National Forest

Objection Responses

Issue 1: NEPA

Contention 1.1: Cumulative Effects

Objectors: John Daggett, Brad Wilson

Issue Statement:

The objectors contend that future land exchanges in the area were not considered in violation of the National Environmental Policy Act.

Response:

A cumulative impact analysis is required by NEPA, considering past, present, and reasonably foreseeable actions. The Crazy Mountain Ranch land exchange was part of the proposed action, and effects are analyzed. How past management actions are addressed is described on page 17 of the South Crazy Mountains Land Exchange Environmental Assessment (EA). Discussions regarding future land exchanges on the Forest may be occurring between parties; however, no proposal has been submitted to the Forest Service. I find the Responsible Official considered past, present, and reasonably foreseeable actions in compliance with NEPA.

Contention 1.2: Discrepancy Between EA and FONSI

Objector: Brad Wilson

Issue Statement:

An objector disagrees with the land exchange and contends there is a discrepancy between the EA and Finding of No Significant Impact because the EA covers all three components of the land exchange (Crazy Mountain Ranch, Rock Creek Ranch, and Wild Eagle Mountain Ranch), while the FONSI covers only the Rock Creek Ranch and Wild Eagle Mountain Ranch components.

Response:

All three components of the land exchange proposal are included in the FONSI. The Crazy Mountain Ranch is cited specifically at factor #8 on page 4. The three components of the land exchange were considered together to document anticipated effects and determine if a FONSI was appropriate (draft Decision Notice, p. 2). The EA states (p. 4) the Forest Supervisor may decide to proceed with all of the exchanges or components thereof. The Responsible Official retains the right to decide in the future regarding the land exchange with the Crazy Mountain Ranch. I find no discrepancy between the EA and FONSI.

Issue 2: Wildlife

Contention 2.1: Elk Habitat

Objector: John Daggett

Issue Statement:

An objector contends that elk habitat and access to elk habitat on federal lands will be made worse with the proposed land exchange.

Response:

Elk are listed as a Management Indicator Species in the Gallatin National Forest Plan. The effects analysis is summarized in the EA (pp. 11, 12, 31) and fully documented in the wildlife report and biological evaluation (p. 7). The analysis concludes that the elk winter range is unaffected by any of the land exchange components. The analysis further concludes that the proposal would result in a net increase in potential habitat, and conservation easements would retain habitat values, continuing protections currently afforded to these lands. By designating the lands coming into federal ownership as semi-primitive, non-motorized, and semi-primitive motorized, there would be a net increase in acres with restrictions on the types of development allowed. Currently, there are no restrictions on the development of nonfederal lands. See Appendix A to the Decision Notice, page 12, regarding consideration of public comments regarding wildlife. Access to roads, trails, and hunting areas is considered in the EA (pp. 22-23).

I conclude that effects on elk and access were assessed and not found to be significant. Throughout the documents the Forest states that the voluntary conservation easements are included in the Agreement to Initiate for the project as voluntary on the part of the private landowners (EA (p. 12). In the summary of comments, (Appendix A, Item G, Page 4), the deciding officer states that...“the Agency has worked closely with the landowners in good faith on all of the elements of the proposal and agreement and has no indication or reason to believe they would not complete the actions in the agreement.” In addition to the current analysis in the EA, I am instructing the Responsible official to add consideration of effects for both wildlife habitat and botanical resources as if the voluntary easements would not be in place. The additional analysis will provide clarity as to the effects even though the risk of not having the CEs put in place may be low or speculative. If the additional analysis and determination are within the scope and range of effects already considered further public review is not necessary.

Issue 3: Water Rights

Contention 3.1: Uncertain Water Rights

Objector: Brad Wilson

Issue Statement:

An objector contends that water rights are uncertain because all water rights are going through the statewide adjudication process by the Montana Water Court and/or the Montana Department of Natural Resources.

Response:

A water rights analysis was completed to address ground or surface water rights associated with the federal and nonfederal lands (Section C.6 project record). Specific water rights in the exchange are described in the EA (pp. 9-10). The water rights to be conveyed with the Rock Creek Ranch Land Exchange are not on the current Objection List being adjudicated by the Montana DNRC. No water rights are being conveyed within the Wild Eagle Mountain Ranch Land Exchange. Relative to this Decision Notice, at the time of the water rights report, "the temporary preliminary decree was completed, and no objections were filed to any of the

claims involved in the exchange..." (Project record Section C.6). I conclude that the responsible official adequately addressed water rights and ensured there was no conflict with water rights objections.

Issue 4: Lands

Contention 4.1: Conservation Easements

Objector: John Daggett

Issue Statement:

An objector contends that the responsible official cannot guarantee that conservation easements will be placed on the lands post exchange.

Response:

The Conservation Easements (CEs) were identified as being voluntarily placed by each of the three landowners following closing on the exchange as described in the EA (p. 12). The EA also discloses that if the landowners place a CE on the property, it will need to be held by a qualified organization in Montana. The three Agreements to Initiate a Land Exchange are documented in the project record (p. 8 each WEMR and RCR; p. 12 CMR) and also disclose the voluntary nature of the conservation easements as agreed to by the landowners. The responsible official correctly notes in response to comments that the voluntary conservation easements will be part of the Exchange Agreement. However, I am instructing the Responsible Official to further clarify their language in Appendix A, Summary of Comments, to directly address the question of what CE terms are in the Landowner Agreements (written or verbal) and the lack of assurance voluntary easements provide in the context of this exchange.

Contention 4.2: North Pacific Public Easements Consideration

Objectors: John Daggett, Brad Wilson

Issue Statement:

Two objectors contend that the responsible official failed to include Northern Pacific public easements, and ask why they can't be used now for public access.

Response:

An analysis of roads and trails was completed as part of the Recreation, Access, and Inventoried Roadless Areas Report. Roads and trails with existing recorded easements, those areas lacking easements, and the unperfected section of the Robinson Bench Road and North Hammond Road were discussed in the EA (Section 2, pp. 11-12, Section 3, pp. 17-18). There were no Northern Pacific recorded public easements identified in the recreation analysis or the EA. The draft Decision Notice (p. 5) discloses that through the exchange, the Forest would acquire an easement on the Robinson Bench Road and Rock Creek Road.

I conclude that there are no known recorded easements on the nonfederal lands involved in this exchange that are not described. Public access is also adequately addressed in the EA, and no entry will be lost.

Issue 5: Mineral Rights

Contention 5.1: Cumulative Effects

Objectors: John Daggett, Brad Wilson

Issue Statement:

Objectors contend that mineral rights and conveyance to White Eagle Mountain Ranch are not made clear in the EA (p. 9) and should not occur.

Response:

An analysis of the outstanding mineral estates was documented in the Environmental Assessment in Section 3.8, page 44, which addressed the effect of managing lands with outstanding minerals rights. The Environmental Assessment notes a greater potential for surface management conflict between the Forest Service and the mineral rights holder. The conclusions on page 45 identify that the private parcels' mineral potential is limited for locatable, leasable, or salable. The Bureau of Land Management concurred with the Forest Service conveying the mineral estate (Mineral Potential Report South Crazy Land Exchange). The effects of a split mineral estate were adequately considered. The draft decision page 4 states, WEMR agrees to diligently pursue the acquisition of the outstanding mineral interests in Section 1, T. 2 N., R. 22 E., for conveyance to the United States if WEMR is unable to convey the full mineral estate, the Forest Service *may* elect to reserve all or certain portions of the federal mineral estate. However, I am instructing the responsible official to clarify and include the final status of the minerals estate for the White Eagle Mountain Ranch component in the final Decision Notice.

Issue 6: Trails

Contention 6.1: Consideration of Historical Trails

Objector(s): John Daggett, Brad Wilson

Issue Statement:

An objector contends that the responsible official does not consider the value of historical trails in the area and only mentioned a ditch.

Response:

An analysis of cultural resources was completed in the EA (Section 3,6, p. 39), disclosing that the Porcupine Lowline Trail was determined to be not eligible for the National Register under the National Historic Preservation Act. Section 3.1, page 18 of the EA, contains a lengthy description of trails in the area and their status. The Forest Service notified the State Historic Preservation Office of their determinations for the federal lands and the Porcupine Lowline Trail System (Project Record). Section C.5, project record, under Recreation Access and IRA, contains a lengthy discussion of trails in the project area, which show the value of historic trails in the area. I conclude that the Responsible Official adequately considered the effects of the exchange on trails in the project area.