Sent via Comment Submission Form

December 23, 2022

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

Re: Preliminary Environmental Assessment, East Crazy Inspiration Divide land exchange proposal, #63115

Dear Ms. Erickson:

WildEarth Guardians respectfully submits the following comments on the Preliminary Environmental Assessment ("PEA") for the proposed East Crazy Inspiration Divide Land Exchange ("ECIDLE") facilitated by Western Lands Group between 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 land trades separately.

According to the PEA, "each component of the East Crazy Inspiration Divide Land Exchange will be completed on an equal value basis (as required by the Federal Land Policy and Management Act ("FLPMA"), Section 206)." PEA, 11. We agree with this statement that each of the six components must separately comply with FLPMA'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 six separate land exchanges with six separate environmental assessment so that the deciding official, and the public, can better determine whether each ECIDLE 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/default/files/2018/06/f53/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 ECIDLE must be evaluated. One such alternative is a land exchange proposal that does not include offered lands from Crazy Mountain Ranch ("CMR"). CMR's offered lands weren't included as part of the proposal until August of this year (though the Yellowstone Club's proposal has included East Crazies ranch lands since July 2020) and there is nothing in the record indicating that earlier, non-CMR versions of the proposal were infeasible.

The CMR parcel in the current proposal was previously included in the initial proposal for the South Crazy Mountains Land Exchange before all CMR parcels were dropped in the final decision. Public comments on the SCMLE preliminary environmental assessment noted that Smeller Lake offers poor fish habitat and the fishery is not self-sustaining. Public comments also noted that ecological surveys performed as part of that assessment indicated the Smeller Lake parcel generally lacked resources worth acquiring via land exchange. A non-CMR alternative would meet the purpose and need expressed in the PEA as it 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. An alternative that did not include the CMR parcel would also result in trading away less federal land, which may result in retaining one or more federal parcels that contain important big-game habitat that is valued by hunters and other recreationists. The public and the decision maker deserve the opportunity to evaluate the benefits and costs of such an alternative.

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 the affected environment in terms of dispersed recreation and trails and of the effects the proposed action would have on dispersed recreation and trails do not meet the standard of a "hard look" under NEPA. The document offers no data or other attempt to quantify public use of existing trails or 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, 36. No evaluation of the quality of quantity of these current recreation uses is offered.

In discussing the effects of the proposed action on existing trails and dispersed recreation the PEA offers five short, relatively vague paragraphs. The first paragraph speaks of an improved user experience at the Big Timber Trailhead, but does not mention that the proposed land exchange is not necessary to improve the trailhead parking lot. The third paragraph notes that the land exchange would make "Smeller Lake accessible for all types of recreation, camping, wildlife viewing, hunting and fishing consistent with the RWA where those opportunities were not previously available." While objectively true, this statement does not include any analysis or description of the quality of the opportunities that would be presented, or any discussion of whether these opportunities are likely to be valued by the public. The PEA does not mention any interest or calls from the public to acquire the Smeller Lake parcel for recreation prior to this proposal. Was there any attempt to determine the extent to which the public is likely to use the Smeller Lake parcel? Was this parcel added to the proposal to benefit the public or to benefit CMR by allowing it to acquire a Federal parcel that would aid its operations? There are many questions regarding this parcel's inclusion in the proposal that need to be answered to determine whether the proposed action would improve recreation experiences. Based on a recent article in Outdoor Life magazine, it appears that at least some recreationists believe that hunting and fishing experiences would not be improved by the land exchange. These people believe the federal parcels offer better habitat and more miles of fishable streams. See https://www.outdoorlife.com/conservation/land-swap-montana-crazy-mountains/ (last accessed December 23, 2022). It appears that the fishing opportunities provided by Smeller Lake are not of significant value, either, as the fishery depends on regular stocking of fish. *See* https://www.livingstonenterprise.com/content/only-half-story-crazies-land-exchange (last accessed December 23, 2022). The PEA fails to compare the quality of the fishing offered by the no action alternative vis-à-vis the proposed action. *See id.*

Regarding public hunting opportunities the PEA is notably evasive in describing the effects of the proposed trade. The entirety of the discussion is a single two-sentence paragraph:

> MFWP would continue to offer hunting opportunities on public lands in this area as part of their management of big game. While there would be a change in hunting opportunity the secured public access routes, and consolidated

> landownership would allow for a greater dispersal of hunters onto Federal lands in the east crazy mountains.

The Outdoor Life article offers greater analysis of the likely effect of the proposed trade on public hunting opportunities. That article notes:

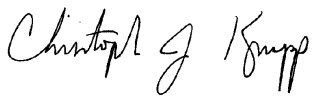
> the parcels that hold most of the area's elk and deer could end up in private hands. In return, the public will get high-mountain country that many hunters consider unfeasible for scouting, hunting, and packing out meat without a string of mules or an endurance athlete's physique. According to onX's topography map, the eastern public land boundary will hardly drop below 7,400 feet, and the rare places where it does drop lower will bump against private land.

The fourth paragraph's single sentence, that "While there would be a change in hunting opportunity the secured public access routes, and consolidated landownership would allow for a greater dispersal of hunters onto Federal lands in the east crazy mountains," is rather meaningless, as it does not address the quality of hunting opportunities in the project area. And it does not analyze whether the trade would likely lead to greater dispersal of hunters in the impacted area. The Outdoor Life article indicates that at least some recreationists believe that that the quality of hunting opportunities provided by the non-Federal parcels is significantly worse than the opportunities on the Federal parcels.

D. Conclusion

Thank you for the opportunity to provide comments on the PEA for the South Crazy Mountains Land Exchange proposal. We believe the Forest Service must address public concern and reconsider elements of the proposed trade if the final proposal is to meet FLPMA's requirement that the exchange well serve the public.

Sincerely,



Chris Krupp, Public Lands Attorney
WildEarth Guardians
10015 Lake City Way #414 | Seattle, WA 98125
ckrupp@wildearthguardians.org