Objections By John Daggett for East Crazy Inspiration Divide Land Exchange Draft Decision Notice, Finding of No Significant Impact, Environmental Assessment and Supporting Documents

November 9, 2023

I refer to my comments on the Proposed Environmental Assessment (PEA) of the subject Project dated December 19, 2022 as backup to my objections to the Draft decision Notice, Finding of No Significant Impact, Environmental Assessment (EA) and Supporting Documents.

One of the proposed land exchange’s main purposes is to help or solve the public access problems in the East Crazies, particularly in the Lower Sweet Grass drainage. This exchange would make it worse. There would be no vehicle access in the future between Big Timber Canyon and the Cottonwood access in the North Crazies after this proposed exchange which is the present condition. This is almost 100 road miles. The Forest Service gives up any historical use of lower Sweet Grass Trail 122 and possible public access on Rein Lane and potentially using the Federal Government’s authority to use condemnation. The Forest Service gives up its own motorized administrative access between Big Timber Creek and Sweet Grass Creek. The Forest Service trades away two sections on lower Sweet Grass Creek and almost four miles of Forest Service Trail 122. A 22-mile, high mountain trail from Big Timber Canyon to Sweet Grass Creek is not reasonable public access. This is considering that landowners and their outfitters are and would continue to access by motorized vehicle the lower elevation federal land that will be exchanged away. These lands are directly below and a short distance away from the proposed new 22-mile trail. Who is going to bust their butt 22 miles to where an outfitter can essentially drive? Access for the public is not solved and not equal. This fact should disqualify the proposed exchange by itself.

In addition, the following issues I identified in my comments to the PEA have not been addressed or, as in the case of wetlands, only partially addressed.

1. The public’s concern that there will be a net loss of wetlands to the public has not been completely addressed.
2. The Environmental Assessment lacks reasonable alternatives that should be considered.
3. Failure to acknowledge Northern Pacific Railroad deeds which reserve easements for public access.
4. History of access problems and failure to address them is not complete.
5. PEA and Draft Decision Notice do not address cumulative negative effects of exchanging low elevation federal lands in this exchange with past exchanges in the Crazy Mountains.
6. There is a net loss of public mineral rights outlined in this exchange as proposed.
7. Loss of water rights to the public are not replaced by an equal value of water rights in this proposed exchange.
8. There would be a net loss to the public of big game habitat in this exchange.
9. This exchange would increase public big game hunting opportunities is claimed by the Forest Service and is not true.
10. Net loss of fisheries to the public has not changed from the PEA.
11. Loss of Lower Sweet Grass lands to the public are not replaced by lands of equal value.
12. The proposed 42-mile loop in the Crazies is not new and has existed since the National Forest trails were built in the early 20th century.
13. Side deals for this project taint the proposed land exchange.
14. Land appraisals have not been completed.
15. **The loss of wetlands has not been completely addressed.** The lack of meaningful protections on adjacent lands from future development could adversely affect wetlands. A deed restriction held by the local conservation district on lands going into private ownership that limits smaller subdivisions than 160 acres are broad and vague. It does not specify how intense development could be on 160 acres or if the local Sweet Grass Conservation District has any history or would enforce a deed restriction on private land. Do they have the funding to go to court to enforce a deed restriction? Potential loss of wetlands to the public still makes this exchange not equal.
16. **The Draft Decision Notice and EA still lack reasonable alternatives to** **consider.** It appears the Forest Service made the decision to accept the landowners’ and Yellowstone Club’s proposal pretty much as they wanted from the start of this process. The draft decision attempts to address the lack of alternatives by dismissing them out of hand because the landowners did not like them. The Draft Decision Notice and EA does not consider any alternative except No Action, the Proposed Action, and Alternative 1. Alternative 1 is a slight variation of the Proposed Action in last year’s PEA with the deed restrictions, conservation easements, and wetlands being partially addressed. However, for the most part Alternative I did not change that much from the Proposed Action last year. Leaving Sweet Grass Parcels out of the Land Exchange, using corner crossings for access and leaving out special carveouts for landowners were not considered and honestly evaluated. For example, why is Parcel 4 included? It is part of a complete National Forest section that helps block up National Forest lands. Why isn’t there an alternative leaving Parcel 4 which is part of Section 14, in Federal ownership? It appears to be a “want” by the private landowner gaining Parcel 4 without justification. Losing it from federal ownership is contrary to the goal of blocking up National Forest. Lack of seriously looking at alternatives, except what Yellowstone Club and the landowners want is not in compliance with what NEPA requires.
17. **The Draft Decision Notice and EA do not address Northern Pacific Railroad deeds which reserve** **easements for public access.** They are not mentioned. I refer to my comments and supporting documents dated December 19, 2022 where I raised this concern. NEPA requires the Forest Service to address them otherwise both the PEA, Draft Decision Notice and EA fail to accurately describe existing access conditions. An alternative using existing deeded easements was not developed because their existence is not acknowledged. Ignoring these helps feed the official storyline that deeded public access does not exist.
18. **The history of access was not adequately addressed in the Draft Decision Notice** **and EA.** In my PEA comments, I point out that the Forest Service maintained that its trails shown on maps since the early 20th century were public. Although there is and has been no written policy change, in 2017 the Forest Service made an unofficial decision to let landowners block Forest Service trails in the Crazies and not enforce their own access rights. A District Ranger almost lost his job enforcing past Forest Service policy. Where is the official record of change in policy. The Forest Service needs to explain the actual history of their past policy up to 2017 and the change since then. It appears that the Forest Service caved to local influential landowners and political pressure to not enforce their policies that had been in place for most of the last century. The Forest Service did not fulfil its Public Trust responsibilities.
19. **The PEA and Draft Decision Notice do not address negative cumulative impacts of exchanging** **away low elevation federal lands for higher, steeper and rockier lands.** My December 19, 2022 comments about this were not addressed. Cumulative affects from past exchanges and this exchange were not mentioned at all. These effects include loss of wildlife habitat in the lower elevations. Future development could have a huge negative affect on wildlife, including big game such as elk, deer and moose. Also, wolverine could be adversely affected by development. According to news reports, the wolverine will be listed on the endangered species list by the end of November 2023. The Draft Decision Notice outlines a modest deed restriction on some of the federal parcels in the Crazies being exchanged away. These are very modest as I have discussed. They only restrict subdividing smaller than 160 acres without restricting the type and intensity of development on those 160 acres. Only some of the parcels would have this deed restriction and the local Sweet Grass County Conservation District would hold it to enforce. As mentioned earlier, does anyone really expect that this deed restriction would ever be enforced by the Conservation District Board made up of other Sweet Grass County landowners or possibly some of the landowners involved in this exchange? Even if they decided to enforce the deed restriction if not followed, where would the funding come from to go to court for enforcement? How would a violation be remedied. The wetland easements are held by the Federal Government according to the Draft Decision Notice. Why aren’t development restrictions done the same way? Again, the cumulative effects of low elevation lands going out of federal ownership in past exchanges combined with this exchange have not been done, particularly pertaining to future potential development. This could have very adverse effects on Big Game and the wolverine. Ignoring these potentially negative cumulative effects is not in compliance with NEPA requirements.
20. **I refer to my comments on the PEA about the loss of mineral rights.** The Draft Decision Notice EA contains similar language to the “South Crazy Mountain Exchange”. That language is that the nonfederal party agrees to diligently pursue acquisition of the outstanding mineral interests on their land and clear them up. As my comments to the PEA asked, were they ever cleared up on the South Crazy Mountain Exchange? The Draft Decision EA did not answer this question. I can only conclude that they were not by this not being answered. Therefore, it appears that the mineral rights being conveyed by the Forest Service of 100% to partial mineral rights being conveyed by private parties will be done if the exchange is approved. The unequal exchange of mineral rights favoring the private landowners should disqualify the land exchange. The PEA, Draft Decision Notice and EA also do not address the rising demand for Rare Earth Minerals. These minerals have received much more public awareness in the last year.
21. **My concerns in my comments on the PEA about the public not receiving an equal value of water** **rights for the water rights going out of federal ownership were not addressed in the Draft** **Decision Notice and EA.** I did not see any change in my water rights concern. An example is that Smeller Lake is touted as a great put and take fishery. However, water rights are 100% reserved by the Crazy Mountain Ranch. How can a fisheries benefit be claimed if the water rights are not conveyed to the federal government and the lake could be drained by the private party? In other cases, federal lower elevation water rights are 100% transferred to private ownership while nonfederal water rights are only partially conveyed or of less value because of their higher elevation in the drainage. This is not equal for the public.
22. **My comments on the PEA last year pointing out the loss of big game habitat to the public were** **not addressed in the Draft Decision Notice EA.** There is no way that an exchange involving 3,855 acres of federal land for 6,110 acres of nonfederal land can be a net gain of 3,690 acres of elk habitat and a net gain of 1,421 acres of goat habitat when most of the nonfederal lands being gained are steep high elevation rocks. Low elevation federal lands being exchanged away are higher for most wildlife except goats. The goat acres gained makes sense, but the elk acres that are claimed to be gained by the public do not. The Draft Decision Notice does not detail how the elk numbers were arrived at. I go back to my comments on the PEA. Further detail is required to justify the conflicting numbers of goat and elk acres. They do not routinely share the same habitat. Further, the Draft Decision Notice EA suggests the internal high elevation steep terrain lands would be protected for goats and wolverines by being blocked up. However, the exchange makes the future development of lower elevation lands going into private ownership easier to develop. As pointed out, the deed restrictions on some of the parcels going into private ownership only limit size of a subdivision. Not the types or intensity of development within a subdivision or how a local conservation district enforces them. Again, this very marginal protection is only on some parcels going into private ownership. The proposed exchange does not address wildlife values and big game habitat lost to the public and I object.

1. **My comments to the PEA last year where the Forest Service claims the exchange increases big** **game hunting opportunities for the public in the East Crazies were not addressed.** The claim is repeated in the Draft Decision Notice and EA. The exchange will make it worse for public big game hunters while making it better for private outfitted hunters. Outfitters will continue their permits on National Forest. They can further develop roads and trails on lower elevation federal parcels transferred to private ownership and access by motorized ATV, UTV or 4x4’s. The National Forest Boundary just below the proposed new trail will be easier for them to access. The public will have to walk or pack horses to hunt a very thin steep corridor that may have big game opening day. They would have to compete with outfitters that can access the same land by motorized use and a short walk. I would expect big game to disperse rapidly onto protected private land after opening day. This does not replace the lands in Sweet Grass and other low elevation parcels the public will be giving up. This is not equal.
2. **The Draft Decision EA does not address my concerns on the net loss of fisheries to the public.** In my PEA comments, I pointed out that Smeller Lake, a “put and take fishery” if Montana Fish Wildlife and Parks stocks it, does not replace self-sustaining fisheries in Big Timber Creek, Otter Creek, and Sweet Grass Creek. I want to point out that Montana Fish, Wildlife and Park’s present 2023 stocking records for the Crazy Mountains does not list Smeller Lake as one of the Crazy Mountain Lakes being stocked. Further, the high elevation nonfederal parcels on Otter Creek and other drainages do not replace the lower elevation federal fisheries going into private ownership. The Draft Decision EA does not address these concerns I raised. My concerns regarding the loss of federal lands that may contain a self-sustaining Yellowstone Cutthroat population in Sweet Grass Creek were not addressed. Yellowstone Cutthroat are designated a ”species of concern” by resource-management agencies. As I stated in my comments to the PEA last year, I have caught Yellowstone Cutthroat higher up the drainage in the North Fork of Sweet Grass Creek and have a friend that has told me he caught nice Yellowstone Cutthroat in Sweet Grass Creek where Milly Creek joins Sweet Grass Creek. This is not far above the federal lands along Sweet Grass Creek that are being proposed to be exchanged away. It seems highly likely that they are present in Sweet Grass Creek on these lands. I asked for further study. I asked about Mountain Whitefish and Brown Trout in Sweet Grass Creek in my comments last year to the PEA. The Aquatic Report in the Draft Decision Notice EA did not address my questions. The exchange would be a net loss of fisheries for the public even without the presence of Yellowstone Cutthroat trout. It may be a violation of Federal Law to exchange away federal lands that have fisheries where they are present. Again, The Forest Service has not addressed my concerns regarding this.
3. **The loss of federal lands along Sweet Grass Creek and access to it are not replaced.** My comments on the PEA are not addressed and as previously stated, a 22-mile, high elevation, extreme nonmotorized trail from Big Timber Canyon is not equal. The Forest Service did not seriously consider other alternatives because the landowners were not in favor. Simply rewarding bad behavior of landowners blocking National Forest System Trails is not adequate justification to give these federal lands and assets away. Trading away Parcels 1 and 2 without meaningful protections creates a four-mile development corridor for the private landowner. This will increase the monetary value of their land immensely. What does the public get? A 22-mile extreme bust-ass trail. Again, some vague 160-acre subdivision restrictions in deeds to be enforced somehow by the Sweet Grass County Conservation District is not clearly defined enforceable protection. Intense development could happen in the future. The rosy picture painted by the Forest Service that there is some protection of lands and things won’t change anyway because landowners have indicated that they don’t have plans to change management of the lands is not realistic. This assumption ignores what is presently happening in the rest of Montana today. It appears to be just “window dressing” to try to address future development concerns on the four-mile development corridor created by the exchange when it really does not.
4. **The 42-mile trail loop the Forest Service claims to be created by the exchange is not new as my** **comments on the PEA explained.** It is being used to justify the exchange when it has already existed for the public through prescriptive use and railroad easements since the Forest Service built the trails in the early 20th century.
5. **There were several side deals that I commented on in the PEA.** These were less emphasized in the Draft Decision Notice. However, they still exist and taint the exchange. I refer to my PEA comments and the carveout I mentioned earlier in Parcel 4 in the Crazies.
6. **The Draft Decision Notice and EA do not have the land appraisals completed for the public to** **evaluate.** An EIS should be completed containing the appraisals, so that the public can understand the monetary value of the lands being considered for exchange.

My conclusion on the Draft Decision Notice and the accompanying documents used to justify the Forest Service approving the Land Exchange is that they are inadequate. They do not justify the East Crazy Inspiration Divide Land Exchange. The net loss to the public verses the gain to the private parties makes the exchange not of equal value for the public. Alternative 1 as presented should be rejected. The public loses way more than the modest gains made by consolidating steep high elevation lands. One of the primary goals of the Land Exchange is to achieve reasonable public access to the East Crazies. This goal is not met. As stated earlier, it is made worse. Please do not approve this Land Exchange. The Forest Service will be making a long-lasting decision that will have detrimental impacts to the Crazy Mountains and the public that use them. It is as bad as the decision to create the checkerboard ownership in the first place and I object.