

The East Crazy Inspiration Divide Land Exchange is the Forest Service (FS) third largest land trade in the Crazy Mountains. The FS has chosen to analyze the project impacts through an Environmental Assessment (EA). These analyses are usually reserved for projects with much more limited scope. The scope of adverse impacts created by this land exchange requires an Environmental Impact Statement to be prepared.

The FS document has several significant deficiencies or omissions regarding the transparency they have toward public participation. These need to be addressed. The FS PEA glosses over adverse impact issues this action would cause. And it does not identify coherent or specific legal proposals for resolving these issues: severed or incomplete mineral rights, national precedent setting abandonment of public land access, and how FS traded land that could be commercially developed would adversely affect the natural resources of the area.

Transparency, Clarity, and Public Participation in the EA Planning process

The FS says it wants transparency in this project regarding public participation in this process. Here are several issues the FS has not addressed during this process. 1) Are the negotiations between the FS, Western Land group, Yellowstone Club, various ranchers, and other LLC.s during the planning period available for public scrutiny or comment, including negotiations between the PEA comment period and the issuance of the FPEA? 2) The FS did not provide the breakdown of comments provided to the FS for the PEA. How many unique comments were for the proposed action and how many against? 3) I have seen nothing in the PEA or FEA about how, when, and with whom the “perfected easements” came to be, along trails 122, 123, and 273 in T4N R11 E and T3N R11E. If the easements were created with any of the current land-owning entities in this project this should be made known. Are there contingencies for these easements if the land exchange fails? 4) The FS states that the northern part of Sweetgrass Road, AKA Rein Lane is a private road. However, I have visited the website: www.sweetgrasscountygov.com, where a 2013 county roadmap shows that Rein Lane is a county road all the way to the center of section 2, T4N R11E. Is the FS mistaken? Has the county vacated that road? The legal status of this road must be determined before the planning process is completed, and any action is taken.

Mineral Rights

The FS would be trading public land with whole mineral rights attached. They would receive land that has severed or split mineral estates, with only one parcel having a whole estate. This is not an equitable situation for the public. The FS proposed deed restrictions on mineral development on parcels 1,2,3,4 is a good proposal.

In the EA, the FS has dismissed the probability of these severed mineral rights being acted on. The EA also provides no means or discussion on how to require perfection of these rights on public land. Nor has the FS assessed the potential value of these rights.

The FS has not disclosed that there had been mining activity in the Big Timber Creek drainage near Blue and Granite Lake in the mid-20th century. There was also unsuccessful prospecting for gold in the same area in the mid 1980's. On the west side of the Crazy range a test oil/gas well was drilled in the mid 1980's. This well was located less than a mile north of Porcupine Station on private land adjacent to to FS land. An additional test well was drilled perhaps 10 miles west out in the Shields valley.

Prior to any finalization of the trade the FS must find an environmentally and legally acceptable solution to mineral rights issues on land the FS receives from the private parties. The fact there are no restrictions on mineral development on parcels 5,6,7 must be addressed. So that the roadless and primitive character of the East Crazies are not compromised.

Land Access Issues

The FS has stated one of the primary motivations for this land trade was to improve public access to the east side of the Crazies. When in fact, the quantity and quality of public access will decrease in this proposal.

Sweetgrass Road and Trail-

The Sweetgrass road first appears in the GLO plat of T5N R12E dated 1892 as it passes from section 35 into unsurveyed section 2 of T4NR12E. As time goes by the road has become senior to the enactment of the Forest Reserve Act of 1906 and to the creation of the USFS. In the GLO plat of 1916 of T4N R12E the road and trail are identified again. A sawmill, two cabins and a settler's house are shown. The GLO plat now allowed settlers to gain a land patent. However, the road and trail once again were senior to this action. The senior rights of the road and trail were affirmed when the Railroad grants deeds were issued by the Federal government. Thereby ensuring that when the railroad grants were sold, the Sweetgrass road easement would follow. Lastly, the easement of the road became senior again to the Federal Land and Policy Management Act of 1976. The road has been used to access a public school and a commercial sawmill. It has been used settlers, commercial loggers, hikers, and horsemen for nearly 130 years. The FS has shown the road and trail on numerous official Forest maps and documents over the years. The FS and county have done maintenance on the road. All these actions established at minimum a historical prescriptive easement on the road and trail. And the FS defended this public easement until 2017. This proposed action is an antithesis of what the FS historically has said they want for this area.

The FS does not deny there is public access to the Sweetgrass road and trail. The FS has in many planning documents, actions, correspondences, and maps, as well as in the 2006 Travel Plan reaffirmed that right and defended the public's rights. What they propose now instead is to relinquish the existing historic and prescriptive rights and not try to perfect existing easements. that have accrued over 130 years of use. Figure 10, page 37 of the FEA shows the current access routes in the project area. It depicts what would be given up if the trade is approved. In this Figure it is easy to see that the FS will not improve public access with the proposed action.

Specifically, FS “perfected” easements would be given up on Sweetgrass Road 990, in parcels 1 and 2 and tract “C” in HES 1129. The FS would give up prescriptive administrative rights on a few miles of roads in parcels 2,3,4,5,6, and 7. Historic public access to the East Trunk trail, Sweetgrass road 990, and part of FS trail 122 would be lost. This all would be replaced with 22-mile Sweetgrass trail. It would replace the approximate 11 mile East Trunk trail. The new trail would be accessible only to backpackers and horses. Day trips would be minimal. The Sweet grass drainage would not be accessible except for a 20 mile hike.

The above proposed action does not make sense and does not fulfill the goals of many of the FS planning documents and the stated goal of this project.

East Trunk Trail-

In FS parcel 6 to be traded, the FS depicts inclusion of tract “C” of Homestead Entry Survey (HES) #1129 in this parcel. When in fact this parcel of land is a separate legal subdivision. It should be given its own parcel number. Tract “C” was created when HES 1129 was approved in 1923. It is a parcel of land approximately 33 feet wide by just under .5 miles, containing 1.83 acres. It extends from the forest boundary on the east of section 36 and extends to the southwest where it ends at the remainder tract of section 36, or parcel 6. Tract “C” is in fact public land reserved by the government for road access. Being that it is public land and has been reserved for road access it should qualify as a “perfected” easement. The FS has used at least part of this tract, in its prescriptive administrative easement through section 36 and into section 35. that connects Amelong creek road 7083 to road 7083C. The public has crossed this tract when they use the East Trunk Trail. The Forest Service has disclosed none of this in the EA planning process.

The existing East trunk trail would be replaced by the 22-mile Sweet Trunk trail. The perfected public access represented by Tract “C” of HES 1129 would be extinguished.

If the public were to lose access to the Sweetgrass road and trail and the East Trunk trail, it is fair to ask the FS what the motivation for this complete turnaround on FS policy is about. In the EA process they have obfuscated the reason(s), stating only that FS feels the unperfected rights are not worth defending. It is public record that these policy changes occurred around 2017. It is public knowledge that a FS ranger was fired and then rehired for defending the Sweetgrass public prescriptive easement in this time frame. It is also common knowledge that political pressure came to bear from a Montana Federal official and Washington D.C. officials. It is legally correct to ask the FS to explain these events in the context of the environmental planning process for this land exchange. If this trade was to occur it would set a national precedent for the way the Forest Service approaches public access land trades involving prescriptive easements. Acquiescence to political pressure or intimidation to the public or the FS by other trade participants is not in the best interest of the FS or the public. The FS must protect the historic legal access right of the public.

Possible Impacts of Commercial Development on traded FS lands

In the FEA the Forest Service has created deed restrictions on Parcels 1,2,3,4 thereby limiting subdivisions of those parcels to 160 acres. This does not preclude development of hotels, resorts, other commercial businesses, or golf courses. Development of any of these facilities would compromise the roadless, primitive feel of the East Crazy environ. And would have an adverse impact on wildlife on adjacent forest. Additional deed restrictions or conservation easements on these parcels need to be in force to prevent this from happening.

There are no deed restrictions or conservation easements proposed for parcels 5,6,7. This is an unacceptable situation. It is very short sighted by the FS to consider the current proposal. There would be nothing to prevent large scale residential subdivisions, resorts or hotels, hard rock mining or oil and gas development from being built. Again, this situation would compromise the roadless and primitive feel in the Crazy mountains. The FS would by trading parcels 3,5,6,7 create an encroachment strip 1 mile wide 6 miles in length westerly, that would have large adverse impact onto the remaining FS property to the west. The FS states in the FEA these owners gave assurances that this land would not be developed. This is not a legally defensible position for the FS. Deed restrictions or permanent conservation easements must be put into place before any exchange takes place.

If these parcels remain unprotected from development the FS must consider potential adverse impacts of these actions upon water quality, and flora and fauna of the surrounding area. This must be addressed in the planning process before the exchange is completed. FS must identify adverse impacts of increased wildfire potential on any commercial or residential development to be created and on the surrounding natural environment in the Forest.

Conclusion

I find the FS FEA for this project deficient in preventing adverse impacts to public access, and the potential for unrestrained development of FS land to be traded on the surrounding natural environment. The scope and impacts of this project require an Environmental Impact Statement to be made. The FS failure to defend public access to Sweetgrass Creek would create a national precedent that would adversely affect similar land trades that have historic prescriptive access. The FS seems not to understand this. Or it does, and the Crazy land trade is to be a test case, for the onset of new national policy to trade public land and access with those entities with the greatest financial assets and influence.

