



November 10, 2023

Northern Regional Office

Responsible Officer: Forest Supervisor Mary Erickson

Attn: Objection Reviewing Officer
ECID, 26 Fort Missoula, Road
Missoula, MT 59804

RE: Park County Rod and Gun Club's objection to Alternative 1 Draft Notice

The following objection is submitted on the Finding of No Significant Impact on for the East Crazy Inspiration Divide Land Exchange published September 27, 2023.

Projected Objected To

In Pursuant to 36 C.F.R. § 218.8(d)(4), I, President of the Park Co. Rod and Gun club and authorized by BOD approval, object to the following project: East Crazy Inspiration Divide Land Exchange. The Responsible Office and Forest/Ranger District are: Forest Supervisor Mary Erickson, Northern Regional Office, Custer Gallatin National Forest, Bozeman and Yellowstone Ranger Districts

Our club objection was submitted via: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=63115>

Lead Objector

As required by 36 C.F.R. § 218.8 (d)(3), the Objectors designate the "Lead Objector" as follows:

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Park County Rod and Gun Club
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Livingston, MT 59047
(406) 220-3651
pcrandgc@gmail.com



To whom it may concern,

The Park Co. Rod and Gun Club (PCR&GC) is a local 501 C (3) non-profit organization based in Park County, Montana. We submit the following to help address challenges associated with the East Crazy Inspiration Divide Land Exchange. The PCR&GC averages 1,400 family memberships representing over 2,500 individuals primarily located in Park, Sweet Grass, and Gallatin Counties, Montana. We are concerned about safeguards protecting subsistence hunting, fishing, and foraging opportunities and access to public lands in the Crazy Mountains for future generations.

Prior to October 2016, PCR&GC has immersed itself in the intricacies of the challenges posed by the Crazy Mountains. This engagement involves collaborative ventures with diverse conservation groups, thorough research on access issues, compiling deeds and land ownership records, analysis of historical use and access data, participation in land swaps and trail relocations, and organizing public events in Livingston, MT. PCR&GC actively aims to contribute to discussions and decision-making processes regarding the Crazy Mountains.

The East Crazy Inspiration Divide Land Exchange, unveiled by the Custer Gallatin National Forest (CGNF) on November 9, 2022, introduced potential environmental impacts through its preliminary environmental assessment (PEA). The initial Proposed Action suggested swapping approximately 4,135 acres of National Forest System (NFS) lands for roughly 6,430 acres of non-Federal lands in the Crazy and Madison Mountains.

Responding to public input, on September 27, 2023, the USDA Forest Service released an environmental assessment and draft decision notice of finding no significant impact (DN/FONSI). Considering public feedback, the Forest Service opted for Alternative 1 ("Modified Proposed Action") from the new Environmental Assessment (EA). This adjusted proposal seeks to exchange about 3,855 federal acres for approximately 6,110 non-federal acres, addressing wetland protection, access, recreation, and limited development concerns.

Objections Voiced by PCR&GC:

A. Neglect of Legal Defense or Litigation of Historical Access:

PCR&GC expresses reservations about the Forest Service's failure to explore alternatives involving the legal defense or litigation of historical access, as outlined in the Travel Management Plan and National Forest Land Management Plan. The National Environmental Policy Act (NEPA) mandates considering a range of alternatives, and PCR&GC argues that the Forest Service's focus on options favoring private landowners restricts the exploration of reasonable alternatives.

PCR&GC emphasizes that the Forest Service should contemplate defending or litigating historical access, as Objective B-2 of the 2006 Gallatin Travel Plan mandates. This objective directs the Forest System to secure all necessary rights to meet the objectives and future uses of the National Forest System. PCR&GC deems the Forest Service's failure to analyze the option of establishing its rights in court, as outlined in the EA, a significant oversight.



While the Forest Service cites broad discretion in handling historic access situations, PCR&GC asserts that the agency's current stance deviates from its historical position. PCR&GC refers to past statements, such as Forest Service Supervisor Mary Erickson's 2015 letter, acknowledging unperfected prescriptive rights on the trail system.

PCR&GC recommends that the Forest Service publicize all relevant documents, including those supporting its conclusion that adjudicating prescriptive rights is not viable. Additionally, PCR&GC advocates for preparing an Environmental Impact Statement (EIS) to analyze alternative actions, including adjudication and condemnation, comprehensively.

In conclusion, PCR&GC's objections underscore the necessity of considering a broader spectrum of alternatives and thoroughly evaluating the legal avenues available in addressing access issues in the Crazy Mountains.

B. Project Purpose and Need Evaluation by PCR&GC:

The "Purpose and Need" outlined in the Environmental Assessment (EA) fails to align with the proposed project. The National Environmental Policy Act (NEPA) is invoked when an agency suggests an action with potential environmental consequences. The initial step involves defining the "Purpose and Need," leading to exploring alternative courses of action. In this context, the Forest Service articulates seven prudently revised purposes, and PCR&GC contends that not all are adequately met by the Modified Proposed Action.

Resolution of Access and Land Use Disputes: The Modified Proposed Action may objectively meet some needs, but the exchange of lower elevation for higher elevation, in general, diminishes public access to protein-based resources and greatly hinders the working public and subsistence hunters from securing protein-based food resource. Lower elevation lands, with slopes < 30 degrees, riparian features, timber, gentle contours, and better wildlife habitats, offer superior opportunities for subsistence hunters to stalk and harvest large ungulate game animals. Current statistics say that near 60% of Montanans live pay check to pay check. The PCR&GC asserts that this action will further impoverish a large sect of Montana residents who rely on the bounties of wild game to offset the costs of day-to-day life, inflation and family.

- **Historical Access Reduction:** The Modified Proposed Action eliminates significant historical access points for subsistence fishing and hunting, particularly impacting Sweet Grass Creek's recreational use. The new route proposed redirects users away from the creek bed, altering the landscape and reducing access to this historically valued area.
- **Challenges to Retained Access:** Retaining only 200 acres along Sweet Grass Creek is considered insufficient by PCR&GC. The potential threat of stream avulsion jeopardizes this small stretch of access, and the Forest Service's reliance on it may not ensure perpetual public access. PCR&GC recommends securing multiple access points on Sweet Grass Creek.
- **Changes in Fishing Opportunities:** PCR&GC argues that the Modified Proposed Action significantly alters fishing opportunities by replacing historical stream fishing on Sweet Grass and



Big Timber Creek with access to a hatchery-stocked lake. The Forest Service's contention of a relatively minor negative impact on fishing opportunities is deemed disingenuous.

- **Impact on Elk Distribution:** The Modified Proposed Action's effect on elk populations and distribution is questioned by PCR&GC. The shift from lower to higher elevation lands and construction of a 22 mile new trail will result in a net loss of elk hunting wintering grounds and a displacement of elk from public to private lands.
- **Deed Restrictions and Habitat Fragmentation:** The proposed deed restrictions are criticized for not being stringent enough to prevent adverse impacts on elk populations, particularly regarding habitat fragmentation caused by roads. PCR&GC urges additional restrictions to safeguard against habitat fragmentation.
- **Impact on Hunting Opportunities:** PCR&GC rejects the Forest Service's claim that the Modified Proposed Action will increase hunting opportunities for the general public. This is absurd. Instead, PCR&GC anticipates a net loss of public-land subsistence hunting opportunities for Montanan's leading to a concentration of elk on privately owned low-elevation lands.
- **Private-Access-Only Management Units:** Creating de facto private-access-only management units for big game during the hunting season is highlighted by PCR&GC as a detrimental outcome of the Proposed Modified Action.
- **Remedies Proposed by PCR&GC:** PCR&GC recommends securing additional access points to Sweet Grass Creek on private lands and calls for an Environmental Impact Statement (EIS) to thoroughly analyze the on-the-ground effects of the Proposed Modified Action on the public's hunting opportunities.

We encourage the USFS to review the following scientific literature to better understand elk distributions in relations to human activities, namely non-consumptive recreation and no-hunting safe zones so there may be a direct dialog on how the land swap, if implemented, will impact subsistence hunters by reducing access to protein resources found in wildlife and plants but also to adjacent private ranch lands who will deal with the burden of elk grazing on their properties and is a direct result of unnecessary recreational activities and trails on adjacent public lands.

1. Cassirer, E.F., D.J. Freddy, and E.D. Ables. 1992. Elk response to disturbance by cross-country skiers in Yellowstone National Park. *Wildlife Society Bulletin* 20:375-381. 14
2. Cleveland, S.M., M. Hebblewhite, M. Thompson, and R. Henderson. 2012. Linking elk movement and resource selection to hunting pressure in a heterogeneous landscape. *Wildlife Society Bulletin* 36:658-668.
3. Crane, K.K., J.C. Mosley, T.K. Mosley, R.A. Frost, M.A. Smith, W.L. Fuller, and M.W. Tess. 2016. Elk foraging site selection on foothill and mountain rangeland in spring. *Rangeland Ecology and Management* 69:319-325.
4. Gude, J.A., R.A. Garrott, J.J. Borkowski, and F. King. 2006. Prey risk allocation in a grazing ecosystem. *Ecological Applications* 16:285-298. 15



5. Lima, S.L. and L.M. Dill. 1990. Behavioral decisions made under the risk of predation: a review and prospectus. *Can. J. Zool.* 68: 61-640.
6. Naylor, L.M., M.J. Wisdom, and R.G. Anthony. 2009. Behavioral responses of North American elk to recreational activity. *Journal of Wildlife Management* 73:328-338.
7. Proffitt, K.M., J.L. Grigg, R.A. Garrott, K.L. Hamlin, J. Cunningham, J.A. Gude, and C. Jourdonnais. 2010. Changes in elk resource selection and distributions associated with a late-season elk hunt. *Journal of Wildlife Management* 74:210-218.
8. Ranglack, D.H., K.M. Proffitt, J.E. Canfield, J.A. Gude, J. Rotella, and R.A. Garrott. 2017. Security areas for elk during archery and rifle hunting seasons. *Journal of Wildlife Management* 81:778-791.
9. Stankowich, T. 2008. Ungulate flight responses to human disturbances: a review and meta-analysis. *Biol. Cons.* 141: 2159-2173.
10. Wisdom, M.J., H.K. Preisler, L.M. Naylor, R.G. Anthony, B.K. Johnson, and M.M. Rowland. 2018. Elk response to trail-based recreation on public forests. *Forest Ecology and Management.* 411: 223-233.

C. Forest Service's Obligations to Maintain Public Access Claims:

Park Co. Rod and Gun Club emphasize the Forest Service's responsibility to uphold existing public access claims, citing its obligation to consider management plans when evaluating the proposed exchange's alignment with the public interest. The Forest Service must adhere to land and resource management plans outlined in the 2006 Gallatin Travel Management Plan (Travel Plan).

- **Inconsistency with Travel Plan:** The Proposed Action contradicts the 2006 Gallatin Travel Management Plan, violating objectives and commitments established in the travel plan's amendment to the forest plan. PCR&GC argues that this inconsistency compromises the Forest Service's obligation to manage the Custer Gallatin National Forest according to specified goals and objectives.
- **Historic Routes and Recorded Easements:** Numerous historic routes in the Crazy Mountain Range that cross private land are crucial for accessing Forest Service lands. PCR&GC asserts that the Proposed Modified Action contemplates relinquishing three historically used public access trails and four administrative roads to private ownership, even those with existing associated easements held by the Forest Service.
- **Violation of Travel Plan Objectives:** Instead of adhering to the Travel Plan's goals and objectives, the Proposed Modified Action surrenders existing claims to the area. PCR&GC contends that this action contradicts the Travel Plan's stated objectives and raises concerns, especially considering the ongoing litigation and appeals in the Ninth Circuit related to these areas.
- **Maintenance of Status Quo During Litigation:** PCR&GC recommends that, while litigation is ongoing, the Forest Service maintains the status quo and explicitly reserves public and



administrative access claims in the Sweetgrass drainage in sections 7, 8, and 10. Abandoning outstanding claims would, according to PCR&GC, be a significant failure on behalf of the public.

D. Insufficient Analysis of Severed Mineral Rights:

In its objection, PCR&GC highlights a critical oversight in the Environmental Assessment (EA) – the failure to comprehensively analyze the impact of severed mineral rights for the parcels acquired by the Forest Service. PCR&GC emphasizes that Montana's ownership-in-place theory state status allows the separation of mineral interests from the fee simple title.

- **Recognition of Mineral Owners' Rights:** PCR&GC underscores Montana law's recognition of mineral owners' rights to sever and transfer their estates freely. This legal framework results in fractionalized ownership among numerous parties, contributing to complexities in managing mineral rights.
- **Identification of Parcels with Outstanding Mineral Rights:** The EA identifies eight parcels with outstanding mineral rights, revealing fractionalized ownership among many parties. Notably, most of the land acquired in the exchange possesses outstanding mineral interests, raising concerns about effective resource management.
- **Lack of Control Over Non-Parties:** PCR&GC points out that the Modified Proposed Action relies on private owners diligently pursuing the acquisition of outstanding mineral rights. The objection contends that this approach places the Forest Service at the mercy of non-parties who may exploit their rights, contradicting the purported benefits of consolidation.
- **Obligation to Assess Foreseeable Impacts:** PCR&GC asserts the Forest Service's duty to analyze the foreseeable possibility of non-parties exercising their exploration rights on newly acquired federal lands. Additionally, regulations mandate considering whether acquiring property without mineral interests is in the public's best interest.
- **Remedies Proposed by PCR&GC:** PCR&GC suggests a comprehensive analysis through an Environmental Impact Statement (EIS) to assess the impacts of non-parties exercising mineral exploration and development rights. This should include evaluating how severed mineral rights affect the value of acquired lands versus those being exchanged. Additionally, negotiations and tangible assurances from non-parties are recommended.

E. Lack of Transparency on Deed Restrictions and Conservation Easements:

PCR&GC raises concerns about the need for more transparency in the EA regarding the exact contract language or agreement provisions related to proposed deed restrictions and conservation easements. The objection argues that the National Environmental Policy Act (NEPA) requires concrete data and information based on environmental analyses.

- **NEPA Requirements:** PCR&GC emphasizes NEPA's mandate for federal agencies to provide high-quality data, explicitly referring to scientific sources relied upon for conclusions. The



objection contends that the EA falls short of this requirement by vaguely referencing prohibitions and depending on unspecified private landowners' future intentions.

- **Importance of Concrete Data and Agreements:** PCR&GC argues that the Forest Service should provide concrete data, studies, or agreements to substantiate its position and ensure transparency in decision-making. The objection stresses the need for specific agreement terms and provisions to avoid speculative promises.
- **Speculative Nature of Promises:** The objection highlights that promises related to deed restrictions and conservation easements lack specificity. Citing precedent, PCR&GC argues that the Forest Service has an affirmative duty to receive written assurances, share them with the public, and disclose any data used in its environmental analysis.
- **Remedies Proposed by PCR&GC:** PCR&GC recommends the Forest Service publish all current and previously negotiated agreements to assure the public of the actual language and restrictions to be imposed. The Forest Service should also inform the public about monitoring and enforcement mechanisms available to the relevant agency or adjudicator.

F. Dangerous Precedent Set by Proposed Modified Action:

PCR&GC expresses concern that the Proposed Modified Action sets a dangerous precedent by reinforcing and rewarding negative and anti-public behavior of the involved landowners. The objection argues that this approach encourages private landowners to obstruct legal public access until the Forest Service capitulates, posing a threat to public federal land, especially in Montana.

- **Negative Impact on Public Lands:** PCR&GC contends that the approval of the Proposed Land Exchange could embolden private landowners to impede public access, potentially leading to increased efforts to gain private access to pristine riverfronts and wildlife habitats in Montana's remote wild areas.
- **Undermining Forest Service Authority:** PCR&GC argues that such a precedent is not in the public's interest and undermines the Forest Service's authority to manage national forests for public access. The objection advocates for agencies promoting the enforcement of their rights and regulations rather than engaging in closed-door deals with private landowners.

G. Lack of Disclosure on Valuation of Land and Severed Water Rights:

PCR&GC's objection emphasizes the Forest Service's failure to disclose the valuation of the land and severed water rights, as required by the Federal Land Policy and Management Act (FLPMA). The objection asserts that FLPMA mandates the appraisal of land or interest in land included in an exchange before agreeing to the exchange.

- **FLPMA Requirements for Appraisal:** The objection outlines FLPMA requirements, specifying that the appraisal must present an opinion on the market value of the interests subject to the exchange. The appraiser should consider various values, including historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values.

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- **EA's Lack of Valuation Information:** PCR&GC notes that the EA expands on severed water rights elements but provides no valuation of the exchanged lands. This lack of valuation extends to mineral rights, raising concerns about the transparency of the Forest Service's decision-making process.
- **Remedies Proposed by PCR&GC:** PCR&GC suggests that the Forest Service should prepare an Environmental Impact Statement (EIS) that provides the actual valuation of the exchanged lands and how it was calculated. This would ensure full public awareness of the valuation of other interests appurtenant to property exchanged or reserved.

CONCLUSION:

PCR&GC concludes its objection by requesting a meeting to discuss the potential resolution of the raised issues. The organization hopes that the Forest Service will use the objection process and a forum to engage with stakeholders, including PCR&GC, to develop a land exchange proposal that is legal, ecologically sound, and indeed in the interest of all involved parties. Contact information for further inquiries is provided below the conclusion.

Submitted by:

A handwritten signature in black ink, appearing to read "Bill Bryce". The signature is fluid and cursive, written over a light blue horizontal line.

Bill Bryce, President
Park Co. Rod and Gun Club