
File Code: 1570
Date: January 26, 2024

Dear Objector,

This letter is in response to the objections you filed on the proposed East Crazy Inspiration Divide Land Exchange, its associated Environmental Assessment (EA), and the Draft Decision Notice released by Mary Erickson, former Forest Supervisor on the Custer Gallatin National Forest. I have read your objections and reviewed the project record. My review of your objections was conducted in accordance with the administrative review procedures found at 36 CFR 218, Subparts A and B.

ADMINISTRATIVE REVIEW PROCESS

The regulations at 36 CFR 218.8 provide for a pre-decisional administrative review process in which the objector provides sufficient narrative description of the project, specific issues related to the project, and suggested remedies that would resolve the objections.

In my review of your objections, I considered a variety of issues related to the National Environmental Policy Act, the National Forest Management Act, the Endangered Species Act, the Roadless Rule, the National Historic Preservation Act, and the Federal Land Policy and Management Act.

OBJECTION RESOLUTION MEETING

I hosted an objection resolution meeting on Thursday, January 18, 2024, to invite objectors to discuss the issues they raised in their objections and propose potential remedies that would resolve their objections. The following objectors presented their concerns and proposed remedies during the meeting:

- Wild Montana: Maddy Munson, Public Lands Director
- Montana Wildlife Federation: Jeff Lukas, Conservation Director
- Backcountry Hunters and Anglers: Emily Wilmott, Counsel
- Park County Environmental Council: Erica Lighthiser, Deputy Director
- Public Land Water Access Association: Drewry Hanes, Public Access Consultant
- Friends of the Crazy Mountains: Brad Wilson, Founder
- Park County Rod and Gun Club: Hayes Goosey, Treasurer
- Sheila Royston
- Joel Ellefson
- John Daggett
- Ellen Winter
- Rob Gregoire
- Shawn Tripp



Acting Forest Supervisor Kathleen Minor and I appreciated the time and engagement from all who were able to attend.

RESPONSE TO OBJECTIONS AS REQUIRED BY 36 CFR 218.11(b)

Throughout the objections process, I heard objectors' desires for protection of lands and limitations on future development. I also heard concern around the scale and durability of the conservation tools. Each of the existing conservation measures is the outcome of negotiations and agreement with the landowners. The conservation measures that are part of Alternative 1 are not voluntary; rather they are mandatory items that will be recorded at closing. These protections are perpetual and will be a requirement of the binding land exchange.

Though I heard during the resolution meeting that many of the parties did not have a prioritization amongst the parcels in terms of protective conservation measures, the responsible official prioritized protections in Sweet Grass Canyon. This prioritization resulted in the reduction of acreage moving into private ownership in Parcel 2 (section 10) and the addition of perpetual deed restrictions to limit development. Granted, land exchanges are negotiations and, given their very nature, require give and take to reach agreement with the other parties.

Another one of the more common points made in objections was that the Agency should analyze an alternative that involves bringing litigation for Rein Lane, East Trunk and Sweet Grass trails. The responsible official analyzed the no action alternative because, when it comes to negotiated agreements around proposed land exchanges, either the parties agree to a land exchange or they do not. Under the no action alternative, the exchange would not occur and, though litigation options may then still be available to the Agency, the EA does not address such options or whether they would be pursued, viable, or successful because it is not the appropriate tool for doing so. The responsible official has clearly communicated that bringing litigation is not a choice to be made as part of a public process or a NEPA decision. Every route and instance must be evaluated on their individual facts and merits and must be coordinated with Office of General Counsel (OGC) and Department of Justice (DOJ).

As the agency has stated previously, for the trails on the east side of the Crazies in Sweet Grass Canyon and the East Trunk Trail, decades of permissive use controlled by landowners, changes in the physical location of the trails and/or limited trail maintenance records over the span of years makes it more difficult to bring a successful claim forward. Historic interests are not unchanged over time as actions (or inaction) by the landowners, public or Agency influence the strength of prescriptive easement claims.

Finally, I also heard during the objections process that there is a perception that the no action alternative affords access to Rein Lane, East Trunk and Sweet Grass trails. The no action alternative simply means the agency does not proceed with any elements of the proposed land exchange. Access to these areas has been permissive and there is no guarantee that this will continue to be allowed in the future. The no action alternative does not procure or guarantee any perfected public access to these areas now or into the future.

With these topics in mind and after my review of the EA and Draft Decision Notice, I find that the responsible official provided an adequate analysis of the issues raised by all objectors and provided acceptable documentation showing compliance with applicable law, regulation, and

policy. Your objections and our discussions during the resolution meeting identified some areas within the EA and Draft Decision Notice that could be further clarified or updated with clearer connections and references to existing data and completed analyses; thank you. I appreciate your engagement throughout this process.

CONCLUSION

My review constitutes the final administrative determination of the Department of Agriculture; no further review from any other Forest Service or Department of Agriculture official of my written response to your objection is available [36 CFR 218.11(b)(2)].

Sincerely,

DANIEL
MCKEAGUE
DANIEL W MCKEAGUE
Deputy Regional Forester

Digitally signed by
DANIEL MCKEAGUE
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cc: Kathleen Minor, Jennie O'Connor Card, Lauren Oswald, Amanda Williams, Kristopher Cahoon, Emma Reinemann