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Comments: (See attached file Sweet Grass Creek access comment by Thomas McNamee.docx.)

This comment comes from someone very familiar with Sweet Grass Creek, the Crazy Mountains, and the Greater Yellowstone Ecosystem.

My wife and I rented a house on that creek for six summers, on the WD Ranch (of which Stacy Donald's family is an owner), and we hiked that drainage frequently. I am a former member, and former president, of the Greater Yellowstone Coalition. I am the author of three books focused on the Greater Yellowstone Ecosystem.

I know the east side of the Crazies well, and I know many of the people in that community. I know that they care deeply about both the private and public lands of that special place.

Stacy's comment in the recent Zoom call is well taken: consensus and civility have admirably characterized the process as it has proceeded so far. There do arise some issues where the questions are binary, and on those there have been disputes: whether, for example, there is or isn't a prescriptive easement on a certain trail or road.

My comment concerns in particular the question of public access to the Sweet Grass Creek drainage on the Custer Gallatin National Forest. I'm aware that two landowners in its lower reaches assert a private right to certain ways by which the public has historically gained access to the National Forest through their land. They portray their position as a matter of private property rights.

The problem is that they do not have private property rights to those ways of access. The current proposal, unfortunately, takes their side, and there has been an opinion in a court of law to the same effect. That opinion, however, is fundamentally flawed. The judge evidently did not understand the very old principle of easement by prescription. (It dates to English common law and has been upheld in American courts countless times.) According to the Montana state code, prescriptive easements provide individuals with "a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years."

In simpler language, that means that if people have used a trail through private property for five years without the owner's permission, the trail is open to the public forever after.

Once upon a time, the U.S. Forest Service recognized this principle on the Sweet Grass. The public traveled those ways without permission from any private landowner for many years prior to the assertion of private control over them. The judge based her decision on the fact that no deed was recorded for those easements. But prescriptive easements, by definition, don't require deeds. Public use, unpermitted, is the whole point.

The Forest Service's own land use manual makes the same point, in its Region 1 Issuance 5460: "Title to an easement acquired by prescription is as effective as though evidenced by a deed."

In plain English: the public's right to those trails long preceded these landowners' assertion of private rights. They're asserting rights that they simply don't have.

And if this proposed plan is recorded as written, thousands of members of the American public will be effectively shut out of land they own in perpetuity by people who don't own it and don't have the right to shut

them out.