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Comments: Comments by Darin McMurry on PEA East Crazy Inspiration Divide Land Exchange

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Based on the information provided in the Preliminary Environmental Assessment (PEA), it is difficult to confirm that this proposed land exchange is in the public's interest. This proposed land exchange is to help resolve the public access problems along the east end of the Crazy Mountains, and specifically in the currently contested Lower Sweet Grass drainage. It is my belief that this exchange as proposed, resulting in the Forest Service giving up the public's right to Sweet Grass Trail 122, constructing/rerouting public access to a 22-mile hike from Big Timber Canyon, makes public access worse by traversing more difficult terrain therefore likely precluding, certainly limiting, general public use of the Sweet Grass Drainage.

The Forest Service giving up their rights to the Lower Sweet Grass and Trail 122, thereby giving up the public's right on Lower Sweet Grass access to almost four miles of Sweet Grass Creek and the two Forest Service sections on Sweet Grass Creek, only magnifies the public's loss under this exchange. Nothing in this proposed exchange replaces this lost riparian habitat, fishery, or frankly the scenic views offered from the Lower Sweet Grass. Nor does it replace the public's lost fisheries of Otter or Big Timber Creeks.

Trading away lower elevation lands, that include riparian habitat utilized and critical to most all wildlife from insects to big game, for a narrow strip of high elevation land, much of it steep and rocky, is not equal. Specific to elk, the Forest Service indicates that the public will be getting more general and security elk habitat, calling the loss of elk winter range general not crucial. Where is the analysis to support this value exchange? If an elk is utilizing this habitat in the winter, the elk may prefer it as crucial, possibly critical.

Below, I have made more specific comments on the PEA.

#### 1. Lack of Alternatives Seriously Considered

The PEA does not seriously consider any alternatives other than "No Action" or the Proposed Land Exchange. This is a failure of meeting the intent of NEPA which requires the consideration and evaluation of alternatives, not only for the benefit of public input and understanding, but to hopefully facilitate the best possible outcome(s). While other alternatives are identified, they do not appear to be truly vetted and given adequate consideration.

One alternative mentioned is to purchase the inholdings. The Forest Service dismisses this alternative because the landowners in the exchange indicated none of them want to sell. Is the basis for this alternative being

dismissed truly driven by the landowners indicating they will accept nothing else? It is the landowners right not to sell, but what about new/future owners, future changes in public and private perspectives, differing legal opinions? It is the Forest Service's responsibility to protect the public's interest and what position(s) is the Forest Service unwilling to waiver to protect the public's interest, such as placing conservation easements on the federal parcels proposed for transfer to private ownership. The Forest Service should consider and fully analyze this and other alternatives. Landowners should not be rewarded for blocking Forest Service trails to leverage their exchange position to acquire better federal lands

## 2. Failure to Acknowledge Northern Pacific Railroad Deeds Which Reserve Easements for Public Access

The Forest Service needs to reconsider the Northern Pacific Railroad deeds like those specific to Sections 3, 7 and 9 T. 4N., R. 12E., of Lower Sweet Grass Trail 122. These deeds state, [ldquo]the land hereby conveyed, being subject, however to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises[rdquo]. A trail is a road in the context that it is a public byway. This language in the Northern Pacific deeds is common throughout the Crazies including Sweet Grass Creek Trail and East Trunk. As in the past, the Forest Service should use this railroad grant language to help defend or secure, and then maintain public rights of access in the east Crazies.

## 3. History of Access Problems

Pages 5, 6, and 7 of the PEA list the historical access challenges identified by the Forest Service on the Sweet Grass Trail and East Trunk Trail, including the failure to reach a compromise on these historic trails. Though these trails have been shown on Forest Service maps since the early 20th century, and the federal government has authority to gain ROW's including use of eminent domain as authorized by FLPMA for access, the Forest Service has chosen to allow the landowners to block public access and predetermine the outcome of this land exchange. In essence, accept the land exchange as proposed or the landowners will not consider any land exchange and continue to claim control over Rein Lane, East Trunk and the lower Sweet Grass trails.

## 4. Clarity of Mineral Rights Ownership

The proposed land exchange PEA explains mineral rights are to be exchanged as 100 percent of mineral rights on federal parcels to be transferred while partial mineral rights will be received on the nonfederal parcels except for parcels C and D. The PEA further states [ldquo]The nonfederal party agrees to diligently pursue acquisition of the outstanding mineral interests for conveyance to the U.S.[rdquo] If these mineral rights are not secured prior to exchange, what assurance is there they ever will be secured and transferred? If this land exchange proceeds, all outstanding mineral rights on private parcels should be cleared up, acquired if necessary, so 100 percent of them would be transferred to the United States in exchange for 100 percent of the mineral rights on the federal parcels.

## 5. Water Rights Ownership/Exchange

Table 4 of the PEA identifies water rights affected by this proposed land exchange showing rights for federal parcels 2, 3, and 6 being 100% transferred. Are there water rights associated with federal parcels 1, 4, and 5 as Parcel 1 contains Sweet Grass Creek and Parcel 5 contains Otter Creek. Each of these parcels support a self-sustaining fishery of native and non-native fish as stated in the PEA. What will be the impacts to these fisheries once transferred? Should the government reserve some portion of any water rights for maintenance of this fishery?

The nonfederal parcels proposed for transfer have a mixture of 100% water rights, split ownership and reserved rights. Considering parcels A and D, which the PEA indicates 100% transfer of water rights, consists of high elevation, steep, rocky terrain, further analysis should be completed to determine the value of the water rights being exchanged. In particular, those rights associated with parcels which support and are critical to maintaining the self-sustaining fisheries should be analyzed for retention by the government. Specific to parcel K, which contains Smeller Lake, the CMR is reserving 100% of their water right. Bottom line, the water rights proposed to be transferred out of federal ownership for water rights received by the United States is not close to equal.

## 6. Big Game Habitat

The PEA identifies a gain of security cover for elk of (4,989 acres) and a gain of general habitat (3,552 acres). Where is the supporting information such as habitat maps or data to support these claimed gains in habitat. Much of the non-federal lands in this proposed transfer appear to be higher, steeper, rocky terrain. More detailed information needs to be provided to clarify how these acreage gains were determined and where these acreage gains are located, therefore allowing a better assessment to truly determine how these reported gains are a benefit to the public.

Further analysis is also warranted on the net loss of 1254 acres of elk winter range identified in Table 12. The 2,216 acres of winter range conveyed to private ownership, which is generally at lower elevations, is not equal in value to the higher elevation private acres (962) to be conveyed to the United States. The lower elevation lands are likely more valuable winter range habitat. The PEA discounts the winter range loss by calling it general and not crucial.

Page 48 of the PEA states, [ldquo]the overall increase in elk and other big game habitat into federal ownership associated with this proposed exchange will help to maintain the functionality of key big game habitat, such as hiding cover and thermal regulation. Consolidation of habitat would provide better connectivity for big game as they disperse and shift between seasonal habitats.[rdquo] As a general statement this is likely true, however there needs to be data to support this statement. Big game (elk, mule deer, moose) are likely to continue using the current private and federal habitat as in the past, unless human use activities on these parcels change directly causing changes in wildlife use patterns. This proposed exchange does not require, or the landowners will not allow, placement of Conservation Easements on the Federal Parcels being transferred, therefore there are no long-term protections for support of historic wildlife use, or protection from extensive development.

There needs to be more analysis and documentation of big game use on both the Federal and Non-Federal Parcels within this exchange. Without conservation easements placed on the Federal Parcels conveyed, no protections will exist on the lower Sweet Grass Creek Drainage from development.

## 7. Net Loss of Wetlands

The PEA outlines a net loss of approximately 44 acres of wetlands. There are no maps in the PEA where these exist. Locations of wetlands should be identified. Federal laws and rules prohibit a net loss of wetlands, as this proposed exchange does. Federal Parcels containing wetlands should be removed from the exchange.

## 8. Private Land within Parcel I that will Remain Private

Non-federal Parcel I includes a small parcel in the NW corner indicating it will remain private. The PEA should explain the details of this inholding remaining private, including acres and ownership of associated mineral or water rights.

## 9. Conclusion

Upon review of this proposed East Crazy Inspiration Divide Land Exchange, I question if the public's interest is truly being represented. The Forest Service appears eager to proceed with this exchange without protecting wildlife and fisheries habitat on federal parcels conveyed and giving up any claim or right to defend historical access and use. This proposed exchange appears to greatly benefit the private landowners at the expense of public access and resources, under the premise that the public will get guaranteed access via a high elevation, rough trail that will be limiting to general public use, and likely difficult to maintain. The landowners will be getting better lands, with water rights, will continue to keep and utilize their grazing allotments, and their special use permits for outfitting on National Forest land.

This proposed exchange does not require creation of Conservation Easements on the Sweet Grass Federal Parcels or other Federal Parcels conveyed. Conservation Easements should be placed on all Federal Parcels before transfer if the exchange moves forward, therefore protecting these lands from future development.

Additional alternatives, including the potential of purchasing the private inholdings should be considered and evaluated. The No Action alternative is actually better than this exchange as proposed. If the Forest Service chooses to proceed with this exchange, it should complete an EIS because the PEA does not adequately address several issues identified above.