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Comments: Cottonwood has uploaded comments on the proposed action.

12/23/2022 Custer Gallatin National Forest Attn: Forest Supervisor, Mary Erickson P.O. Box 130 Bozeman, MT 59771 RE: Preliminary Environmental Assessment for the East Crazy Inspiration Divide Land Exchange Dear Ms. Erickson, I am writing on behalf of Cottonwood Environmental Law Center ("CELC"), a Bozeman-based conservation organization. Thank you for the opportunity to provide public comment to the Custer Gallatin National Forest ("Forest Service") on the Preliminary Environmental Assessment for the East Crazy Inspiration Divide Land Exchange ("EA"). I. Cottonwood comments on the East Crazy Inspiration Divide Land Exchange This proposal is not necessary. Cottonwood has members that are also members of the Crow Tribe that have Treaty Rights that allow them to access public land behind corners in the Crazy Mountains. The Fort Laramie Treaties of 1851 and 1868 allow Cottonwood members that are also Crow members to access federal land that might otherwise be unavailable for hunting and spiritual ceremonies. a. By ignoring corner crossing as a legitimate public access option, the Forest Service has not adequately analyzed a reasonable range of alternatives to the land exchange. The EA states that the land swap is needed to enhance public access and improve recreational opportunities in the Crazy Mountains. 1 (EA, pg 7) These goals could be accomplished by using corner crossing opportunities to adjust existing trail systems so that they travel through public land. The Forest Service failed to analyze this alternative option in its EA. The National Environmental Policy Act ("NEPA") (24 U.S.C. [sect] 4321 et seq.) requires the Forest Service to "evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination." 3 ([sect] 1502.14 National Environmental Policy Act NEPA Implementing Regulations, May 20, 2022) Reasonable alternative is defined as "a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action." 4 (National Environmental Policy Act NEPA Implementing Regulations, May 20, 2022 pg 48) Corner crossing is a reasonable alternative to the proposed action, and it should have been analyzed in the EA. The Pacific Railway Act of 1862 created the private-public checkerboard structure that now exists in the Crazy Mountains. The Homestead Act of 1862 gave U.S. citizens the right to claim ownership and access those public land parcels. The Railway Act allowed homesteaders to access federal land. When these two acts are coupled, the right for citizens to use corner crossing to access public land becomes clear. Why? Because there were no other legal means of accessing the landlocked public parcels that were promised to homesteaders. The Federal Land Policy and Management Act of 1976 ("FLPMA") ended the Homestead Act and phased out the practice of homesteading, but it explicitly reserved previously-established land use rights: "Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, right-of-way, or other land use right or authorization existing on the date of approval of this Act" 5 (FLPMA, Title VII, Sec. 701.) Because settlers had a right to cross corners to access federal land they were homesteading under the Homestead Act, the provision of FLPMA cited above retained the federal government and public's right to access public land behind corners of private property. This right is also retained by the public under the Ninth Amendment of the U.S. Constitution. Linn County Bank v. Hopkins (1892) established that "two tracts of land touching only at one point are not contiguous," confirming that two parcels of private land touching at one point are not an impassable barrier to homesteaders who were seeking to cross from one parcel of public land to another. Therefore, the right to access public land via corner crossing still stands. While corner crossing may not be the final solution to land access/management issues in the Crazy Mountains, it is a reasonable alternative that was never included or analyzed in the Forest Service's reasonable range of alternatives. An alternative that rerouted existing trails so that they cross publicly-accessible corners could negate the need to swap entire land parcels. The Forest Service should complete a supplementary EA or full Environmental Impact Statement that considers corner crossing as an alternative to the proposed land parcels swaps. At the very least, the Forest Service is required to discuss why the corner crossing option was not included in the current EA. b. The Forest Service did not analyze the indirect and cumulative impacts of increasing the Yellowstone Club's ski terrain, and therefore it did not

meet NEPA process obligations. The Montana DEQ has issued the Yellowstone Club a permit to make snow using treated wastewater near Eglise Mountain. The Forest Service violated NEPA by failing to analyze the Yellowstone Club applying for (and receiving) an additional permit to blow snow pollution on the newly acquired and adjacent land. This is a reasonably foreseeable action. Cottonwood has challenged the snow-making permit for violations of the Montana Environmental Policy Act and Montana Constitution. In particular, the Montana DEQ failed to address the impacts of the snow melting, and pharmaceutical pollution reaching the tributaries and main stem of the Gallatin River. The U.S. EPA and Montana DEQ have generated science that raises significant questions about the effects of pharmaceuticals on fish, amphibians, and humans. Cite. The EA fails to account for the indirect and cumulative impacts of this land transfer by failing to analyze the environmental impacts of snowmaking using treated wastewater on the YC's newly acquired land. The indirect impacts are pharmaceuticals polluting the Gallatin River and its tributaries. The cumulative impacts include the impacts of the reasonably foreseeable snowmaking combined with the impacts of the already permitted snowmaking. Given the fact that the DEQ has already granted the YC a permit⁶ to make snow using treated wastewater, it is a reasonably foreseeable action that the YC would spray snow made from treated wastewater on the new ski terrain it would acquire during the land swap. The impacts of spraying treated wastewater on this newly acquired land were not analyzed in the EA. Therefore, no analyses have been performed to determine how the treated wastewater would impact the Inspiration Divide area of the land swap. The Inspiration Divide area includes numerous Gallatin River tributary streams, including Third Yellow Mule Creek and Muddy Creek. The EA failed to analyze the indirect and cumulative impacts of YC snowmaking in this area, including, but not limited to: pharmaceutical pollution, nutrient loading, human health impacts, and wildlife impacts. /s/ John Meyer JOHN MEYER

6 - <https://deq.mt.gov/News/pressrelease-folder/news-article5>

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