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First name: John

Last name: Meyer

Organization: Cottonwood Environmental Law Center

Title: Executive Director

Comments: Cottonwood has uploaded comments on the proposed action.

12/23/2022Custer Gallatin National ForestAttn: Forest Supervisor, Mary Erickson P.O. Box 130Bozeman, MT

59771RE: Preliminary Environmental Assessment for the East Crazy Inspiration Divide LandExchangeDear Ms.

Erickson,I am writing on behalf of Cottonwood Environmental Law Center ("CELC"), aBozeman-based

conservation organization. Thank you for the opportunity to providepublic comment to the Custer Gallatin

National Forest ("Forest Service") on thePreliminary Environmental Assessment for the East Crazy Inspiration

Divide LandExchange ("EA").I. Cottonwood comments on the East Crazy Inspiration Divide Land ExchangeThis

proposal is not necessary. Cottonwood has members that are also members of theCrow Tribe that have Treaty

Rights that allow them to access public land behind cornersin the Crazy Mountains. The Fort Laramie Treaties of

1851 and 1868 allow Cottonwoodmembers that are also Crow members to access federal land that might

otherwise beunavailable for hunting and spiritual ceremonies.a. By ignoring corner crossing as a legitimate public

access option, the ForestService has not adequately analyzed a reasonable range of alternatives to theland

exchange.The EA states that the land swap is needed to enhance public access and improverecreational

opportunities in the Crazy Mountains.1(EA, pg 7) These goals could be accomplishedby using corner crossing

opportunities to adjust existing trail systems so that they travelthrough public land. The Forest Service failed to

analyze this alternative option in its EA.The National Environmental Policy Act ("NEPA") (2 42 U.S.C. [sect] 4321

et seq.) requires the Forest Service to"evaluate reasonable alternatives to the proposed action, and, for

alternatives that theagency eliminated from detailed study, briefly discuss the reasons for their elimination." 3 (

[sect] 1502.14 National Environmental Policy Act NEPA Implementing Regulations, May20, 2022)Reasonable

alternative is defined as "a reasonable range of alternatives that aretechnically and economically feasible, and

meet the purpose and need for the proposedaction." 4 (

National Environmental Policy Act NEPA Implementing Regulations, May 20, 2022 pg48)

Corner crossing is a reasonable alternative to the proposed action, and it shouldhave been analyzed in the

EA.The Pacific Railway Act of 1862 created the private-public checkerboard structure thatnow exists in the

Crazies. The Homestead Act of 1862 gave U.S. citizens the right toclaim ownership and access those public land

parcels. The Railway Act allowshomesteaders to access federal land. When these two acts are coupled, the right

forcitizens to use corner crossing to access public land becomes clear. Why? Because therewere no other legal

means of accessing the landlocked public parcels that were promisedto homesteaders.The Federal Land Policy

and Management Act of 1976 ("FLPMA") ended theHomestead Act and phased out the practice of

homesteading, but it explicitly reservedpreviously-established land use rights:"Nothing in this Act, or in any

amendment made by this Act, shall be construed asterminating any valid lease, permit, patient, right-of-way, or

other land use right orauthorization 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 werehomesteading under the

Homestead Act, the provision of FLPMA cited above retainedthe federal government and public's right to access

public land behind corners of privateproperty. 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

atone point are not contiguous," confirming that two parcels of private land touching at onepoint are not an

impassable barrier to homesteaders who were seeking to cross from oneparcel of public land to another.

Therefore, the right to access public land via cornercrossing still stands.While corner crossing may not be the

final solution to land access/management issues inthe Crazies, it is a reasonable alternative that was never

included or analyzed in the ForestService's reasonable range of alternatives. An alternative that rerouted existing

trails sothat they cross publicly-accessible corners could negate the need to swap entire landparcels.The Forest

Service should complete a supplementary EA or full Environmental ImpactStatement that considers corner

crossing as an alternative to the proposed land parcelswaps. At the very least, the Forest Service is required to

discuss why the corner crossingoption was not included in the current EA.b. The Forest Service did not analyze

the indirect and cumulative impacts ofincreasing 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

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