Data Submitted (UTC 11): 12/9/2022 11:44:21 PM
First name: Colin
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Title:
Comments: Dear Forest Service,

I STRONGLY oppose the proposed land swap. While land swaps in principle can help expand public access to our birthright (being our commonly owned public lands), this proposal lease the public with the short end of the stick and grossly benefits the Yellowstone Club and other adjacent landowners. This is UNACCEPTABLE for multiple reason, including the following:

1. The PEA violates the current Travel Plan.

a. The PEA creates a net loss to public recreation opportunities and a reduction of existing public access points to the Crazies.

b. The PEA eliminates existing hunting and fishing opportunities, and overall alters the nature and scope of existing recreational opportunities in the Sweet Grass drainage.

c. The PEA contemplates relinquishing three (3) historically used public access trails and four (4) administrative roads to private ownership; this directly violates current Travel Plan objectives.

2. The PEA does not meet the stated goals within the same PEA.

a. Within the PEA, the Custer Gallatin National Forest (CGNF) admits to a reduction in public recreational opportunities. To justify this loss, the agency erroneously contends that it meets the projects goals because in its current state Sweet Grass Trail is "a long out and back trail with no scenic destination" where "[c]urrent use levels are low." This not only mischaracterizes the actual trail which connects with other trails and is widely considered one of the more scenic trails in the Crazies and provides significant recreational value (especially to hunters), but the claim is also based on the false premise that Sweet Grass Creek is not currently in use.

b. Use of Sweet Grass Creek for recreational opportunities, including hunting and fishing access, is very well documented. Additionally, as the USFS acknowledged, most use of Sweet Grass Trail occurs during the fall hunting season. Eliminating access to those areas would preclude historical access opportunities for hunting and angling.

c. As proposed, a new 22-mile East Trunk Trail would be constructed with only one access point from the south. This new route would not only eliminate a separate, existing public access point but would severely alter the nature of and use of the trail for compatible recreational opportunities. For the public to enjoy previously accessed property from the northern route, the public would need to hike at least 11 miles. This distance, in conjunction with a single access point, renders previous hunting, fishing or day-hike opportunities inaccessible; it would shift historical recreation use of the area.

d. Additionally, the single access point also creates additional concerns as it relates to increased trail use in areas not previously accessed, bottlenecking and creating congestion at the trail head area, increasing remote, long-distance use, straining maintenance crews and emergency-rescue personnel while increasing expenses for trail maintenance, and creating unfeasibility of use for certain recreational users due to severely steepened trail topography and inconvenient trail distances.

3. The PEA fails to analyze the effects that severed ownership of mineral interests in the parcels being acquired by USFS could have on those lands in the future.

a. Tenets of mineral law observe a general rule of mineral estate dominance, meaning one of the foundational rights to mineral ownership is the right to enter upon the surface of the property and make any use of it that is reasonably required for enjoyment of the mineral estate. Simply put, mineral rights supersede surface rights, and that makes it very difficult to stop mineral exploration and development.

b. In this exchange, 100% of the federally owned mineral rights would be transferred to the non-federal parties, and only 18% of non-federal mineral rights would be transferred to federal ownership in return. This would lead to a significant imbalance of monetary value and property rights, with the public getting the short end of the stick on both.

c. The law in Montana is clear in relation to the dominance of the mineral estate. Thus, it is not unreasonable to assume that the unknown and unanalyzed severed owners of these claims may decide to assert these valuable rights in the future. At that time, under Montana law, those owners would have the ability to disrupt the surface by building roads, cutting down trees, diverting water, and using any and all legal means they choose to develop their mineral rights.

4. The PEA is faulty because it does not disclose the monetary value of land exchanged.

a. Federal Land Policy and Management Act (FLPMA) requires that the value of exchanged lands be equal, adjusted for any difference in value by cash equalization payments up to 25% of the value of the Federal lands to be disposed.

b. The PEA omits public disclosure of land valuation exchanged.

c. Therefore, we believe the PEA is faulty, misleading, and perhaps illegal.

5. The PEA is faulty because it does not disclose valuation of severed water rights.

a. A reasonable appraisal would contain the value of water rights exchanged.

b. The PEA does not contain any publicly disclosed value of severed water rights from Federal to non-Federal parties.

6. The PEA is faulty because it does not disclose a valuation of timberlands in the exchange.

a. Federal Land Policy and Management Act (FLPMA) requires that timberland values received by the public in an exchange are equal-to or higher-than that of the timberland values received by the non-federal party in the exchange.

b. The PEA omits public disclosure of timberland values exchanged.

c. Therefore, we believe the PEA is faulty, misleading, and perhaps illegal.

7. The PEA is faulty because it relies on public benefits which it does not provide, and therefore cannot consider as a part of the Project proposal because those benefits are not guaranteed.

a. The PEA claims non-federal parties will construct the new trail, make the trailhead, and provide parking lot improvements. No contracts between federal and non-federal parties have been disclosed to the public for review within the PEA.

b. The PEA claims non-federal parties will provide access to Crazy Peak to the Crow Nation, allow access across private lands, and consider conservation easements on lands received in the exchange. These agreements do not include the federal party involved in the exchange and therefore are misleading and cannot be considered by the public as an additive value resulting from the exchange. There are no guarantees these agreement can be trusted/guaranteed or enforced, rendering their benefits inappropriate to include in the PEA.

8. The PEA is faulty because it violates Executive Order 12962 requiring a no-net-loss of wetlands in land exchange.

a. The PEA estimates the total wetland value within the currently non-federal parcels to be 7.8 acres, with the total wetland acreage within the currently federal parcels to be 52.4 acres. This means that the Proposed Land Exchange would result in a significant loss of wetland acreage under federal control: a net loss of 44.6 acres to be specific.

b. The wetlands analysis has been done twice and in each case the public was found to be losing significant wetland acres.

9. Typically, this type of proposal has multiple options, however the PEA proposes to evaluate only "two" alternatives: (1) a "no-action alternative" and (2) Proposed Land Exchange.

a. NEPA requires an agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C § 4332 (2)(E).

b. The Service eliminated four other alternatives due to claims of technical or economical infeasibility. In other words, the Service evaluated only the Proposal from the Yellowstone Club and adjacent landowners plus the no-action alternative required by law.

c. The law does not support this limited range of alternatives, as it is reasonable to consider others - such as defending current access rights - as viable alternatives in the PEA. The underlying rationale of one two alternatives creates the perception of a pre-determined outcome: do what the Yellowstone Club and adjacent landowners want. This lack of alternatives, which subsequently leads to a predetermined outcome, is precisely the type of "foreordained formality" decision-making that violates NEPA as a matter of law.

10. The Project sets a dangerous precedent by reinforcing and rewarding the negative and anti-public behavior of the landowners involved.

a. The Proposed Land Exchange would set a terrible precedent and is poor public policy. Encouraging private landowners to stand their ground in obstructing legal public access until

the USFS acquiesces to their demands is dangerous to all members of the public and all public federal land,

particularly in Montana.

b. State, federal, and local agencies should be promoting the enforcement of their own rights, rules, and regulations, rather than capitulating to parties who are undermining the public's rights.

11. The PEA fails to analyze that the Project will result in habitat loss and degradation of the riparian zone along Sweet Grass Creek.

a. The USFS is directed to regulate aquatic resources for the benefit of increased fishing opportunities. Here, the PEA does the exact opposite. The USFS asserts there will be minor negative impact on stream fishing opportunity. This is disingenuous as there will be no net fish habitat improved or protected, or fishing opportunity gained, by federal ownership.

b. The PEA would create a net loss in federal riparian habitat. Executive Order 12962 directs USFS agencies to the extent permitted by law and where practicable, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities. This PEA does the opposite.

12. The public forever loses rightful claim up Sweet Grass Creek Road and Trail #122

a. The current Travel Plan designated the Sweet Grass Trail No. 122 as a public, non-motorized and non-mechanized trail. It is currently managed from the west to T. 4 N., R. 12 E., Section 8, as a Trail Class 3 trail for foot and stock use. The UFS determined that the access to the area was "inadequate" and thus, included in its Travel Plan the need and desire to "Perfect trail access across private in-holdings within Sweet Grass…"

b. The PEA, however, ignores the goals set forth in the Travel Plan and does not reserve Sweet Grass Trail No. 122 for administrative or public use. This is in direct conflict with Forest Services' own objectives and would forever relinquish a public access point in the Crazy Mountains. 13. The public trades low-lying and highly productive and diverse wildlife habitat for steeper and higher elevation rock and ice. Particularly for elk hunters, this is concerning because of the reduction in quality elk hunting opportunities this will create.

For these reasons, I strongly encourage you to reject this proposed land swap and instead work with both landowners and public access advocacy groups to create a fair, equitable, and even handed approach moving forward.

Please do not hesitate to reach out for clarification or for further comments.

Regards,

Dr. Colin D. Crook, DNP-PCNS, RN, CCRN, ACCNS-P