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First name: Mark
Last name: Daggett
Organization:
Title:
Comments: COMMENTS ON EAST CRAZY INSPIRATION DIVIDE LAND EXCHANGE

INTRODUCTION

As proposed, I oppose the East Crazy Inspiration Divide Land Exchange ("Proposed Exchange").
The Proposed Exchange is multi-faceted and convoluted, and links what should be a simple land exchange in the Big Sky-area property with an unrelated, extraordinarily complex, and emotionally charged land exchange in the east Crazy Mountains. The Proposed Exchange reduces the value our public lands and negatively impacts our access, hunting, fishing, and enjoyment opportunities in the south end of the Crazy Mountains.

The Proposed Exchange is deficient in a number of areas; however, I will focus my comments on the following:
1.The Proposed Exchange eliminates the existing access.
2.The Proposed Exchange degrades recreational opportunities.
3.The Proposed Exchanges does not provide for the effective natural resource management of the consolidated lands.
4.The Proposed Exchange increased the potential for development on exchanged private land.
5.The Proposed Exchange does not describe related agreements, and the USFS is not a party to some of these related agreements.
6.The Proposed Exchange does not develop and consider adequate alternatives.

ELIMINATING THE EXISTING ACCESS TO SWEET GRASS CANYON IS UNACCEPTABLE

The Proposed Exchange eliminates the public's current access point to Sweet Grass Trail #122 and access to and recreational use of lower Sweet Grass Creek.

The Preliminary Environmental Assessment (PEA) describes this route as "…a long out and back trail with scenic destination." This could not be further from the truth. When I was a young boy, along with my friends, we hiked up Sweet Grass Creek Trail #122. This trail is a very scenic and I have great memories of those hikes. The United States Forest Service (USFS) is proposing to replace this short, easy access with a 22-mile access to a point just above the old trailhead.
The existing access is a short distance access. The new trail would reroute the existing, lower level, East Trunk Trail and the lower end of Sweet Grass Trail #122 with a new trail through high-elevation rock slopes. This new East End Trail would now require one to two days of rigorous hiking. From a practical standpoint, the new access point and route will be restricted to multi-day backpackers and packhorses.

The new trail changes the nature and recreational opportunities. The new trail would have scenic views, but would have no access for fishing and no reasonable access for hunting. Currently, access via Trail #122 is a scenic hike through meadows with direct access to fishing on Sweet Grass Creek. The existing East Trunk Trail provides access to better elk hunting habitat than the new trail which traverses poor elk habitat.

ACTION:
1.Maintain and improve access to the Crazy Mountains and lower Sweet Grass Creek.

DEGRADING THE PUBLIC'S RECREATIONAL OPPORTUNITIES IN THE CRAZY MOUNTAINS IS

UNACCEPTABLE

The Proposed Exchange consolidates timbered foothills and the lower Sweet Grass Creek into private ownership and high elevation alpine areas into public ownership. Although the intent is this consolidation is meaningful, the Proposed Exchange improves the recreational opportunities for the private landowners while diminishing the recreational opportunities for the public.

The Proposed Exchange consolidates land in timbered foothills and Sweet Grass Creek for private landowners, improving access and expanding hunting and fishing areas. The timbered foothills have the best big game hunting which provides excellent elk hunting habitat. Lower Sweet Grass Creek is home to good trout fishing.

On the other hand, the public benefits are more difficult to discern. While consolidating high elevation land is an improvement, the access to that land is diminished, habitat suitable for elk hunting is reduced, and the opportunity to fish is all but eliminated. The remaining areas suitable for elk hunting would be limited, and hunting pressure would drive elk into the more expansive private land. The Proposed Exchange eliminates public ownership of the riparian environment along lower Sweet Grass Creek. Overall, the Proposed Exchange a material net loss in recreational opportunities for the public.

ACTION:
1.Preserve and expand the public's recreational opportunities in the Crazy Mountains.

NATURAL RESOURCE MANAGEMENT IS INADEQUATE

The USFS mismanages the exchange for natural resources in the Proposed Exchange.

The USFS fails to obtain adequate value for existing mineral rights and fails to protect consolidated land from future development. The Proposed Exchange asks the public to give up 100% of mineral rights on land going to the landowners. In return, however, the public receives only mineral rights on two of the eleven sections it is receiving. In Montana, mineral rights supersede surface rights, so it is reasonable to assume that the 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 on the newly consolidated public lands.

The USFS fails to protect and preserve existing water rights. The Proposed Exchange asks the public give up all water rights on land it is giving to the landowners, while it does not receive the water rights on all the land it receives.

The USFS fails to obtain adequate value for existing timber and fails to protect both transferred and consolidated land from logging. Prior to an exchange, landowners could harvest timber. After an exchange, the consolidate timbered lowlands will provide landowners the opportunity for harvesting timber. The PEA does not address this issue.

In the PEA and as required by law, the USFS does not provide an appraisal or value analysis for real estate, access roads, mineral rights, water rights, timber, and so on. Additionally, the USFS does not require conservation easements on any of the exchanged lands to restrict development.

ACTIONS:
1.In the PEA and as required by law, appraise real estate and the value of natural resources such as mineral rights, water rights and timber.
2.Equitably exchange mineral rights, water rights, and timber.

DEVELOPMENT ON PUBLIC LAND TRANSFERRED TO PRIVATE LANDOWNERS IS UNRESTRICTED

The USFS does not take any measures to protect any of the exchanged lands to restrict future development.

Once land is consolidated, landowners will have the opportunity for traditional development such as mining or logging. The mining issue mentioned above is especially concerning, and needs to be managed proactively to prevent unintended outcomes. Landowners and the USFS need to be transparent with their logging interests so that future logging operations are discussed and included in the PEA. Additionally, landowners could contemplate significant tourist developments such as a golf courses and other commercial developments. The existing PEA is silent on this issue and so one is to conclude that development is unrestricted.

ACTIONS:
1.Protect exchanged public land from future development inconsistent with environmental and recreational values.

RELATED AGREEMENTS NOT INCLUDED IN PEA

The USFS mentions and relies upon public benefits of several proposed arrangements by third parties in the exchanged and adjacent lands. There are several arrangements that lack transparency and are not available for public review. These include the arrangement to construct and pay for the new East End Trail and parking lot improvements, the preservation of access to upper Sweet Grass Creek drainage of Rein Lane and the conservation easement for Section 7 granted by Switchback Ranch, LLC. The USFS describes the benefits within the PEA of access to Crazy Peak for the Crow Tribe and access across private land and consideration of conservation easements, however, the USFS is not a party to and cannot enforce or guarantee these agreements.

ACTION:
1.The USFS must become a signatory to agreements related the Proposed Exchange.
2.The USFS must make the related agreements public.

ADEQUATE ALTERNATIVES ARE NOT DEVELOPED OR CONSIDERED

The Proposed Exchange would set a terrible precedent and is poor public policy. The PEA presents a limited range of alternatives which is either 1) No Action or 2) the Proposed Exchange. By restricting the alternatives, the USFS capitulates to the landowners' desire for a limited exchange of land and years of obstructing legal public access.

In the PEA, the USFS states that discussions and negotiations have been ongoing since 2018. On July 2021, the Wester Lands Group submitted the non-Federal parties' final proposal. The USFS agreed to this proposal with minor revisions, signing a non-binding agreement covering the scope of the Proposed Exchange. The PEA never mentions any serious effort by the USFS to develop alternatives or the proposal of any other alternatives. The details of these discussions need to be disclosed, as required by law.

There are at least two other alternatives that could and should be explored which are to 1) defend historical access, and 2) expand the scope of land exchange.

The USFS's starting point for alternatives is defending the historical access. The USFS has a duty to acquire all

interests and rights need to meet the objectives and future uses of the Crazies. Furthermore, the right of public access in the Crazies is well documented and began when the US Government deeded title of the land the Northern Pacific Railroad. Until recently, the USFS defended the right to access. This policy shift or change is not well understood and is not in the best interest of the public. The USFS must include in the PEA an alternative to defend the historical access which includes the resources and strategies to do so.

Expanding the scope of the Proposed Exchange provides a platform to resolve public access and land-use issues more fully. Additionally, an expanded scope could preserve and protect the historical character of the Crazies by limiting future development.

One potential concept would be to convert all non-Federal land to Federal land within and adjacent to the USFS boundary. In the PEA, the USFS dismissed this approach stating, "that landowners have only expressed interest in exchanging non-Federal lands for Federal lands located within, and adjacent, to their private lands." The USFS never mentions that they never attempted to propose a broader concept to the landowners, however, they need to do so.
In my career over the past 40 years, I have negotiated deals in the oil and gas industry, and as you might expect, these negotiations were difficult. In my experience, the USFS needs to understand what would be required to make a broader concept possible. Is it money, or something else. Everyone has their price. That price may make a broader concept infeasible, but excusing it away without any attempt is irresponsible.

A broader approach would require the direct purchase of non-Federal land. Yes, the landowners would need to approve. However, as I mentioned, everyone has their price. However, if you look forward 10, 20 or 50 years, the conflicts and issues will not go away with a partial solution. The Proposed Exchange is a mere partial solution leaving many issues unresolved. A grander approach now, while more challenging, could benefit both landowners and the public by eliminating further confrontation and litigation. Finally, a more comprehensive approach could preserve the natural grandeur of the Crazies.

ACTION:
1.As required by law and to improve transparency, the USFS needs to disclose the record of discussions and negotiations leading up the Proposed Exchange.
2.The USFS must develop a plan to fully defend and preserve historical public access rights.
3.The USFS take a strategic view of the issues in the south end of the Crazies, and develop a plan to include other non-Federal land in the south end of the Crazies, and to fully address public access and to preserve the historical character of the Crazies.

CONCLUSION

The USFS outlines seven (7) guiding principles of the PEA for the East Crazy Inspiration Divide Land Exchange:
1.To resolve long-standing public access and land use disputes.
2.To provide for more effective and efficient natural resource management and protection of consolidated lands.
3.To improve recreational opportunities and provide for perpetual public access in both the East Crazies, Smeller Lake and along Inspiration Divide.
4.To secure and protect roadless characteristics and provide a quiet, recreation opportunity consistent with the Crazy Mountain BCA and South Crazy Mountain RWA.
5.To conserve the existing traditional uses and landscape character of the Crazy Mountains by reducing the potential for development of private lands interior to and comingled with NFS lands.
6.To conserve wildlife connectivity and protect key habitat.
7.To increase protection of high elevation lands in the Crazy Mountain Range, an important traditional cultural area identified by the Crow Tribe.
The fundamental issue is that the Proposed Exchange does not fulfill the requirements of these guiding

principles.

First, it does not resolve long-standing public access and land use disputes. It only shifts the debate and does not address issues in other non-Federal lands in the southern Crazies.

Second, as described earlier, the Proposed Exchange does not protect consolidated lands.

Third, public access is not improved in the East Crazies, it is diminished.

Fourth, the roadless characteristics of the Crazies are not protected in the public land conveyed to private landowners. In fact, you could assume that there is a distinct possibility for more development and more roads on lower elevations and along lower Sweet Grass Creek.

Fifth, the Proposed Exchange changes the nature of access by the public and presents landowners the opportunity for development.

Sixth, the Proposed Exchange deteriorates the protection of key habitat by consolidating land into contiguous private tracts with no restriction on development.

Seventh, while protection of the consolidated high elevation lands is improved, the land including Crazy Peak is not a part of the Proposed Exchange.

As described, the Proposed Exchange should be scrapped. The USFS needs to present and pursue alternatives to attain their guiding principles more fully and to address and meet the needs of the public.