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First name: John
Last name: Daggett
Organization:
Title:
Comments: Comments by John Daggett on PEA East Crazy Inspiration Divide Land Exchange
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While this proposed land exchange's main purpose is to help or solve the public access problems, particularly in the Lower Sweet Grass drainages, this exchange would make it worse. Most people who want to access the Sweet Grass for its mountain lakes and scenic beauty are not going to hike 22 miles from Big Timber Canyon to get where they could start out at the Sweet Grass Trail 122. This access is made worse by the Forest Service giving up their rights to the Lower Sweet Grass Trail. I have hiked into the Sweet Grass using the trailhead on Sweet Grass Trail and the Sunlight Trail from the west. My son has hiked into the Sweet Grass from Trespass to the west. You can also access Sweet Grass from upper Big Timber Creek over the Big Timber Creek Divide. While the Sweet Grass trailhead is easiest from a hiker or horseback rider's point of view, Trespass or even upper Big Timber Creek, would be easier than the proposed new trail. I believe most people are going to use Trespass Access over this new proposed route. It will be far easier. By 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 are lost. There is nothing in this proposed exchange that replaces that. This doesn't include the public's fisheries loss on Sweet Grass, Otter or Big Timber Creeks.

Trading away lower elevation elk and big game habitat including winter range for a narrow strip of high elevation land, much of it steep and rocky, is not equal. The Forest Service wants to explain this away by stating the public will be getting more general and security elk habitat and calling the loss of elk winter range general not crucial. If an elk is feeding on it in the winter, it would seem the elk may think it is crucial.
Below, I will make more specific comments on the Preliminary Environmental Assessment (PEA).

1. Lack of Alternatives Seriously Considered
The PEA does not seriously consider any alternatives other than "No Action" or the Proposed Exchange as required by NEPA. While other alternatives are mentioned they are not given adequate consideration. This seems to be driven by the landowners who indicate they will accept nothing else. One of the alternatives mentioned is to purchase the inholdings. The Forest Service dismisses purchasing because it is stated none of the landowners in the exchange want to sell. This statement is based on "today", not tomorrow or ten years from now. At least one of the ranches that are now owned by Switchback Ranch involved in the exchange came up for sale in 2013. Where was the Forest Service? There may be other inholdings that have come up, but the Forest Service seems like a turtle on its back, not able to do anything. Just wait until a trail is blocked and wait for a proposed exchange from those blocking the trails. Bad actors who block Forest Service trails to leverage their desire to acquire the choicest Forest Service lands should not be rewarded.

Another suggestion is considering building a new East Trunk Trail which crosses Forest Service section corners. This would eliminate the need to exchange low elevation lands for higher less desirable big game habitat. This trail would not be as easy as the original East Trunk Trail. However, the new Sweet Trunk 22-mile trail in the proposed exchange would not be an easy
trail to construct, use or maintain.
The bottom line is the Forest Service did not take a serious look at other alternatives other than the proposal of landowners and the Yellowstone Club.

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

The Forest Service failed to address Northern Pacific Railroad deeds which state, "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". A trail is a road in the context that it is a public byway. This language in Northern Pacific deeds is common throughout the Crazies including Sweet Grass Creek Trail and East Trunk. The Forest Service used the railroad grant language to help secure access up Big Timber Canyon in a 1948 court case against the landowner. The federal court initially granted an injunction against the landowner allowing the Forest Service and public to use the road until the trial. The landowner eventually settled out of court, granting an easement to the Forest Service for the agency and the public in 1953. Please see attached the following: United States Verses Van Cleve, 1948, Big Timber Canyon; Exhibit C.C.F.S. Memo Wonder Ranch; Briefing Paper Crazy Mountain Access June 2017; Northern Pacific Railroad Deeds for Sections3, 7 and 9 T. 4N., R. 12E., of Lower Sweet Grass Trail 122. I did not attach all the deeds pertaining to Sweet Grass, East Trunk and other trails including parts of Rein Lane, but they are available in public records and on EMWH's website.

3. History of Access Problems

On pages 5, 6, and 7, the Forest Service listed the history of difficulties for access on the Sweet Grass Trail and East Trunk Trails, but failed to reach a compromise on these historic trails. They have been shown on Forest Service maps since the early 20th century. The federal government has immense authority to gain ROW. Eminent domain is authorized by FLPMA for access and can be used by the Forest Service, but the Service has chosen the easy route of letting the landowners block access and pick a land exchange they like. This exchange has not changed appreciably from its original creation. Accept the land exchange as is or the landowners won't give the Forest Service and some public access. Landowners blocking access claim control over Rein Lane, East Trunk and the lower Sweet Grass trails. This appears to be nothing more than extortion and this is the path the Forest Service has chosen. Attached are internal records illustrating a long history of access issues on Sweet Grass Trail 122 and East Trunk Trail 115.

4. PEA Does Not Address Cumulative Effects of Low Elevation Trades

The Forest Service has not addressed the cumulative effects of exchanging away low elevation lands for higher, steeper, and rockier lands in the Preliminary Environmental Assessment (PEA) of this exchange proposal. This is required by NEPA. This is a concern I had previously raised and was one of my objections to the South Crazy Mountain Exchange. Even though I brought up that future like exchanges were being planned, primarily this exchange, the Forest Service dismissed my objections because no "formal proposal has been submitted." As this PEA points out, the Forest Service was working with Western Lands Group (WLP) on this proposed exchange prior to me making my comments and objections. On page 6 of this PEA, it states, "in September 2020, the Forest Service provided preliminary feedback on the proposal and identified issues to WLG to consider prior to submitting their final proposal." This was before I made my objections on the South Crazy Mountain Exchange in early 2021. See attached "Objection Responses to South Crazy Mountains Land Exchange Environmental Assessment and Draft Decision Notice".
The Forest Service must do a cumulative effects analysis of trading away lower elevation lands next to the Forest boundary effectively moving the Forest boundary back to steeper rockier terrain. These original boundaries are the boundaries drawn by President Theodore Roosevelt and Gifford Pinchot when they created the Forest Service.

5. Loss of Mineral Rights

The proposed East Crazy Inspiration Divide land Exchange PEA explains mineral rights to be exchanged. 100 percent of mineral rights on federal parcels to be transferred while receiving partial mineral rights on the nonfederal parcels except for parcels C and D. "The nonfederal party agrees to diligently pursue acquisition of the outstanding mineral interests for conveyance to the U.S." This is not binding and leaves up in the air if full mineral rights will be transferred at the time the lands are transferred.

This issue was one of my objections on the South Crazy Mountain Exchange. In that exchange my concerns about outstanding mineral rights were dismissed because the mineral potential was supposedly limited. Another concern of mine was the language that the "owner of Wild Eagle Mountain Ranch will diligently pursue the acquisition of outstanding mineral interest in Section 1, T2N, R2E for conveyance to the United States". In response to my objection the Deputy Regional Forester, Keith Lannom, went on to state that, "The Forest Service may elect to reserve all or certain portions of the federal mineral estate. However, I am instructing the responsible official to clarify and include the final status of the minerals estate for the White Eagle Mountain Ranch component in the final decision notice." Since this exchange is now concluded, what happened? Were the mineral rights cleared up? See attached "Objection Responses to South Crazy Mountains Land Exchange Environmental Assessment and Draft Decision Notice".

All outstanding mineral rights on private parcels should be cleared up 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. Although the PEA did not have a detailed mineral potential analysis in it, it should be done before a decision is made. Even if it is low, an analysis only points to mineral potential today, not what mineral potential may be in the future or the type of mineral. Mineral rights are stronger than surface rights and they must be cleared up prior to making a final decision on the proposed exchange.

6. Loss of Water Rights

Table 4 shows water rights affected by the proposed land exchange. The table shows federal parcels 2, 3, and 6 which would be 100% transferred. Are there water rights on federal parcels 1, 4, and 5? Parcel 1 contains Sweet Grass Creek and Parcel 5 contains Otter Creek. Both parcels support a self-sustaining fishery of native and non-native fish as stated in the PEA.
The nonfederal parcels have a mixture of 100% water rights, split ownership and reserved. Parcels A and D show to transfer 100%. Both parcels contain high, steep, rocky terrain. The value of the water rights is not equal to the federal parcels that 100% of the water rights will be transferred. Particularly the parcels which contain a self-sustaining diverse fishery.
In parcel K, which contains Smeller Lake, CMR will reserve 100% of their water right. Overall, the water rights to transfer out of federal ownership for water rights received to the United States is very lopsided in favor of the nonfederal parties. It is not close to equal.

7. Loss of Big Game Habitat

While the PEA portrays a very rosy picture of gained security cover for elk of 4,989 acres and a gain of 3,552 acres of general habitat, the PEA does not show any maps or data where this occurs. Looking at aerial views of the nonfederal parcels, much of the land is on higher, steeper, rocky terrain with much of it shale rock. How were these gains calculated? It appears from aerial views that all the Federal Parcels in the East Crazies would be general elk habitat. I have been hunting elk in the Crazies since 1969 and I have never seen an elk in the shale rock much less killed one in the high rocks. While they may cross it, I have found elk generally at lower elevations. Yes, I have seen elk in the higher basins at times, but the lower elevation lands are more important. The PEA in table 12 shows a net loss in elk winter rage of 1,254 acres. It should be noted that 2,216 acres of winter range conveyed to private is at generally lower elevations than the 962 acres of private conveyed to the United States. It should not be considered equal on an acre for acre comparison. The lower elevation lands are more valuable as winter range it would seem. The PEA discounts the winter range loss by calling it general and not crucial.

The second paragraph under the title "Big Game (elk, mule deer, moose)" on page 48 paints a rosy picture stating, "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." This statement is not backed up by any analysis. Big game (elk, mule deer, moose) are going to continue to use the habitat they use now unless they are pressured off it through hunting or development. Since this exchange does not require the Federal Parcels being transferred to have Conservation Easements, there are no long-term protections for them. This exchange proposal reduces quality elk habitat, particularly winter range. It also will reduce other big game habitat for mule deer and moose on federal lands. Much more work needs to be done to document big game usage of the Federal and Non-Federal Parcels. With no conservation easements on the Federal Parcels conveyed, potential development of the lower elevation lands and lower Sweet Grass Creek are enhanced. The high, steep terrain in checkerboard ownership already protects the high Crazies from large scale development.

8. Increased Quality Big Game Hunting in the Proposed Exchange is Questionable.

This exchange creates a thin belt of higher elevation lands for the public to hunt big game according to the PEA. Outfitters are currently using these federal lands on the east side of the Crazies. They would continue to do so under this exchange proposal only losing the Federal Parcels transferred into private ownership. The catch is that they are already using the private lands adjacent to Forest Service lands. This proposal helps the hunting outfitters because it has consolidated their use of the lower elevation lands which they lease or own the hunting access rights to. They will still retain their special use permits on the higher Forest Service lands that may contain big game, particularly elk. There is nothing in the PEA that informs otherwise.
Outfitters with their clients can access the lower elevation lands from two tracked trails with four-wheel drive, side-by-side, or ATV within a short distance of the Forest Service lands. Aerial views of these lands show these two track trails. The increased use by the public is highly questionable. Who is going to go to the effort to hunt this narrow belt of habitat on Forest Service when the same area can be accessed by outfitters using motorized vehicles to get within a short distance of Forest Service lands? In addition, any hunting pressure put on big game, particularly elk, will move them out of the public land to private land below.

This proposed exchange over sells elk and big game hunting opportunities. Besides competition with outfitters, inclement weather will make use over the proposed high elevation, rugged trail difficult if not impossible.
Lands with big game habitat, especially elk, drives rural real estate values. The parties receiving federal parcels in the Crazy Mountains will be getting the best elk habitat and the most access to them. Big game habitat and big game hunting heavily favors the private parties receiving federal parcels in the proposed exchange.

9. 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.

10. Loss of Fisheries

The PEA discusses aquatic resources in section 3.6. Under Federal Parcels, Otter Creek in Parcel 5 supports an adverse assemblage comprised of brown and rainbow trout as well as native mountain whitefish, lake chub, longnose dace, longnose sucker, mountain sucker, and white sucker. Sweet Grass Creek in parcels 1 and 2 support the same fish except brown trout and mountain whitefish. Are brown trout and mountain whitefish an oversight on Sweet Grass Creek? Big Timber Creek supports brook trout, brown trout, rainbow trout and native mountain whitefish. Sweet Grass, Otter and Big Timber Creek, three self-sustaining fisheries, would hold the same native species presumably? The PEA does not explain why there is a difference.
Of the Nonfederal Parcels, only Sweet Grass Creek in Parcel I provides similar habitat. Otter Creek in Parcel F supports the same diverse fishery as in Parcel 5, but at a headwater location with a steeper gradient and discharge. It is assumed in the PEA that it is suboptimal for fish. Only part of Parcel I's water right would be

conveyed.  Water rights are not discussed for Parcels F and 5.
I know from fishing mountain streams that any stream that supports nonnative trout such as brook trout, rainbow trout, brown trout and a diversity of native fish will support native Yellowstone cutthroat trout.  Given the chance for Yellowstone cutthroat not to have to compete with nonnative trout, they have shown they can be returned to streams they historically used.  The PEA does not discuss this.

The PEA seems to conclude that the "put and take fishery" in Smeller Lake would replace the self-sustaining fisheries on Sweet Grass, Otter, and Big Timber Creeks contained in parcels 1, 2, 5, and 7.  The Crazy Mountain Ranch would retain the water rights to Smeller Lake.

Comparing naturally self-sustaining fisheries, two of which the Forest Service now has the water right to a "put and take" fishery with no water right conveyed is making an apple and orange comparison.  Montana Fish, Wildlife and Parks has long put a self-sustaining fishery as the highest value.

I have caught cutthroat trout in an upper Sweet Grass drainage tributary.  These may have been originally from the stocked lakes above where I fished.  The fish seemed to be self-sustaining because there was no way for them to return to the lakes above.  A friend of mine caught nice cutthroat trout (16inches) in the lower Sweet Grass along Trail 122.  The PEA does not discuss cutthroat trout in the Sweet Grass drainage.  My contention is that Sweet Grass Creek does or would support native Yellowstone cutthroat.  Further analysis of this should be addressed.
In summation, the proposed exchange would result in a net loss of self-sustaining fisheries in federal ownership. Non-federal Parcels containing fish only have partial water rights to be conveyed or not addressed.

11.  Special Carveout of Private Land in Parcel I to Stay Private

Non-federal Parcel I has a small carveout in the NW corner to stay private.  Aerial views of this area show a structure and I assume that is why the landowner wants to keep it.  The PEA does not explain this, how many acres it is or if it includes Sweet Grass Creek.  The PEA should
address this.

12.  Cultural Resource Misconceptions

The PEA states that a goal of this proposed exchange is to, "Increase protection of high elevation lands in the Crazy Mountain Range, an important cultural area identified by the Crow Tribe".  However, the PEA lacked a detailed analysis of cultural resources.  Furthermore, while the high elevations of the Crazies were used by aboriginal peoples, most of the documented cultural resource sites are found at lower elevations.  See attached November 30, 2022, Op-Ed to the Livingston Enterprise by Larry Lahren taking issue with statements made that the high elevations were the most important.  You must ask yourself, where was the game?

13.  Loss of Lower Sweet Grass Access and Lands

Loss of Lower Sweet Grass federal sections in parcels 1 and 2, and the loss of the lower portions of Sweet Grass Trail 122 in sections 2, 10, 9,8 and 7, T4N, R12E are not replaced with anything close to equal value in the proposed exchange.  The proposed new 22-mile-high elevation is not a replacement for the historic access up Rein Lane to the Sweet Grass Trail 122 trailhead.  Besides the historic use of this access, there are Northern Pacific deeds in sections 3, 7 and 9 which reserve the right of public uses for any existing roads at the time of the deed transfer.  Sweet Grass Trail 122 was in existence at the time Northern Pacific sold these sections to other private parties.  See attached Northern Pacific Railroad deed transfers.

Besides the easier route up Sweet Grass using Trail 122 starting at the trailhead in which the first approximately 3.6 miles of the trail is a two tracked road, the safety factor for a hunter, hiker, fisherman or other recreational use

cannot be overstated. Cell phone coverage is spotty at best in the Crazy Mountains. Inclement weather can descend on the Crazies in a short time. If one is caught in the Sweet Grass in an emergency or in bad weather such as a heavy snowstorm, the best option of getting out of the Sweet Grass is to go to the Sweet Grass trailhead. In deep snow going over passes to the west or using the new proposed trail becomes impossible. Sweet Grass Trail 122 is the best way, and this exchange proposes getting rid of it for the public and the Forest Service. While the landowners say they would continue to allow access to the Sweet Grass trailhead using Rein Lane, the use is speculative. It is disputed whether Rein Lane is a public road or a private road as some landowners claim. Nevertheless, FLPMA allows the Forest Service to use immanent domain to access National Forest. Rein Lane and Sweet Grass Trail 122 and its trailhead is the only viable realistic public access into the Sweet Grass drainage. Exchanging it for a 22-mile-high elevation trail from Big Timber Canyon and Half Moon Campground is not close to being equal, realistic or safe. This new trail will require more maintenance than the original trails just by the nature of the terrain it crosses. Lower Sweet Grass Trail 122 would require very little access it would seem because most of it you can easily drive on. It is a two tracked road. Calling this new 22-mile-trail access replacement doesn't make it so.

Trading away parcels 1 and 2 creates a four-mile development in the Lower Sweet Grass. While nothing is stated now, it is easy to see the development potential in this scenic four-mile strip. Checkerboard ownership actually protects these lands from large scale development. The proposed exchange does not require any creation of Conservation Easements on the Sweet Grass Federal Parcels or other Federal Parcels to prevent development. Conservation Easements should be put on all Federal Parcels before transfer if the exchange moves forward.

14. The Proposed 42 Mile Loop Is Not New

This loop has already existed since the early 20th century. The 1925 Forest Service map of the South Crazy Mountains shows the Big Timber Canyon Trail, East Trunk Trail and the Sweet Grass Trail. It is not something new. The Forest Service has simply given up on protecting the public and their own rights to use parts of them. The PEA seems to exclaim "a new idea". It is not.
In exchange for this "new idea of a 42 mile loop", the Forest Service has to exchange low elevation lands and get high, steep, rocky lands; give up two key sections(8 and 10) along Sweet Grass Creek; give up all historic public and Forest Service access on the lower sections of Sweet Grass Trail 122, give up rights to the historic East Trunk Trail, create a special carveout of part of a solid section of Forest Service in parcel 4 for a landowner, give up low elevation roadless section 24, parcel 5, a net loss of 1254 acres in winter range, a net loss of wetlands, a net loss of water rights, a net loss of self-sustaining fisheries with native and non-native fish possibly including Yellowstone cutthroat trout, a loss in mineral rights, and the loss of administrative access for the Forest Service of six roads. This includes Sweet Grass Road 990, Sweet Grass Road 900, Billy Creek Road #7085, Amelong Creek #7083, Amelong a Spur #7083-A and Amelong Creek Spur #7083-C.
The public will get a so called new 42-mile loop which includes the proposed new 22-mile Sweet Trunk Trail #224, more acres although they are on higher, steeper, rockier terrain and a new parking lot. Of the 42-mile loop at least one part of it the Forest Service states they don't possess an easement for. The landowner, Switchback Ranch, is part of this exchange, but has not included it in this exchange so far.

15. Side Deals

On page 4 of the PEA, there are four side deals that are not part of this exchange and are included for informational purposes. However, the first part of the full paragraph on page 4 states, "In conjunction with this land exchange, the Non-Federal party negotiated the following elements on private lands within or near the exchange to enhance the overall public benefits of this project". While they are not directly evaluated, they seem to being used to sell the proposed exchange. All of these are speculative, Rein Lane Access, future Conservation Easements and access for the Crow Nation by Switchback Ranch to Crazy Peak. A Conservation Easement would also be placed on Section 7 where Crazy Peak is located. These all seem tied to the proposed

land exchange going through. All of these could take place without the exchange and would be the right thing to do regardless. It has also come to light that some of the private parties of this exchange are providing some monetary support to at least one group supporting the exchange. If this is true and I believe it is, since it was admitted in a recent public meeting in Livingston, this really taints this exchange process.

16. Conclusion

Upon close examination of the proposed East Crazy Inspiration Divide Land Exchange, one must wonder if there was really anything of real substance the Forest Service asked for themselves or for the public. The Forest Service is so eager to make this exchange to get the East Crazy access issue off their back (problem solved) that they are even willing to give up their own access for administrative purposes. Meanwhile, the landowners blocking access are getting the best lands. As explained in previous sections, improved development potential on both their lands and federal parcels they receive. They would continue to have their grazing allotments and special use permits for outfitters on National Forest land. What landowner would go ahead with a land exchange like this? I guess the answer is the Forest Service. I know other agencies require administrative access when issuing grazing allotments. Who would give an outfitter a special use permit on their land if the landowner using that outfitter didn't allow administrative access? I guess the Forest Service.

The East Crazy Inspiration Divide Land Exchange is so screwed up that it should be scrapped. A long-term plan to purchase the private inholdings should be initiated. No action is better than this proposal. If the Forest Service plans on moving ahead, it should do an EIS because the PEA does not address several issues raised in my comments and others. The bias in the PEA is no more profoundly illustrated than the statement on page 36 which states, "The Sweet Grass Trail is a long out and back trail with no scenic destination." One only must go to the photos on the Sweet Grass Ranch's website, a party to this exchange, to see its scenic value. My experience hiking in the Sweet Grass is that it contains some of the most scenic mountain country one can experience. In my opinion, it is the "Crown Jewel Drainage" in the Crazy Mountains. I refer to the Sweet Grass as the "Alps of the Crazies". The statement on page 36 of the PEA is put there, one would presume, to mislead the public into thinking they are not giving up anything of importance. It could not be further from the truth. Basically, the public will get the rocks, a 22-mile extreme high elevation trail and a parking lot from the proposed exchange. Reminds me of part of the lyrics to the 1970's song by Joni Mitchell "Big Yellow Taxi", where she says:

Don't it always seem to go
That you don't know what you got 'till it's gone
They paved paradise, put up a parking lot.