



COLORADO WILD PUBLIC LANDS

June 22, 2018

Kremmling Field Office,
Bureau of Land Management,
P.O. Box 68,
Kremmling, CO 80549

Via e-mail: kfo_webmail@blm.gov.

Dear BLM Kremmling Field Office,

RE: Proposed Blue Valley Land Exchange DEIS Comments

The following are the comments of Colorado Wild Public Lands on the Draft Environmental Impact Statement (DEIS) for the Proposed Blue Valley Land Exchange, Grand and Summit Counties, Colorado.

We commend the Kremmling Field Office for producing a detailed document. (It should still be improved, as we advocate in Section I below.) We have also found the BLM staff to be courteous and helpful, despite an often stressful process. The open house meetings at Silverthorne on June 4 and Kremmling on June 6 were useful and staff were helpful in responding to questions. We thank them for pleasant and productive interactions.

After reviewing the DEIS and supporting information, we are providing our detailed analysis and comments below. These are based also on our conversations with involved groups, users of the area, and members of the public.

I. INFORMATION IMPORTANT TO A DETERMINATION OF THE PUBLIC INTEREST IS UNAVAILABLE

Though the DEIS provides much valuable information on the parcels proposed for exchange, some important information does not appear in this document, making a full evaluation of the possible public interest of the proposed land exchange impossible. We describe the missing elements below.

- Public access and use of Blue River – The majority of scoping comments that were against the land exchange addressed the concern around loss of public access and use of the Blue River, yet this is minimally addressed in the DEIS. Similar concerns were identified in the 2005 scoping period and identified by the BLM KFO to be addressed in the EA anticipated at that time. (DEIS at2&3)
- Assurance of continued public use of the Blue River - The DEIS suggests that the public will have the right to continue to use the Blue River for floating and fishing, and that they will be permitted to stop and rest in the Spring Creek Bridge area.

Users that previously used the Federal parcels as a stopping point, would no longer be able to stop in this area and would have to stop earlier at the proposed Spring Creek Bridge area.

DEIS 3-28

The DEIS should include an appendix disclosing a binding agreement between the proponent and appropriate entities that would ensure the public's right to float the river without encumbrances, and also address the proposed agreements for the Spring Creek Bridge area.

- Descriptions of the proposed recreation improvements and the related future ownership, easements, funding and management plan are unclear – These need to be more specific including type, amounts and layout of facilities, costs, locations and especially future funding and management, in order to be evaluated and provide the public assurance of the commitments. The DEIS states that the proponent has agreed to enter an MOU with the BLM (DEIS: 2-6, 2-7). This should have been drafted and included in the document.
- Description of existing conditions and analysis of future conditions on national forest land - Proposed access (a new trail) to national forest land adjacent to the Blue River is described in the DEIS as being provided by the proponent as mitigation for loss of public riverfront lands. However no information is provided about the existing national forest land that is being accessed, the existing conditions, natural resources, suitability for future development and proposed Forest Service management. Information is needed on the proposed trail design, whether it is an existing trail or a new trail, and proposed grades and widths to determine usability and impacts. What is the terrain like at the bottom of the trail and how much access is available considering topography?

- Description of current management challenges and alternative solutions - One of the purposes of the proposed LEX is to “improve management of public lands while minimizing and reducing conflict.”(DEIS ES-1). The DEIS mentions current conflicts with the public and the private landowners but does not provide documentation of the details of the management challenges. Specific details should be provided as to where and how often these conflicts occur. Following documentation of the challenges, the BLM should consider alternative methods of resolving the conflicts besides exchanging land; for example, could signs be placed, additional parking provided on current BLM property, etc. Provide an estimate of annual costs of managing “difficult to manage lands” and an estimated cost savings from consolidation thru LEX. The DEIS must consider all reasonable alternatives including purchase of private lands.
- Future protection of identified sensitive resources on land that will become private - Valuable natural resources have been identified on various BLM parcels that are proposed for exchange., including previously identified “retention” parcels, see following Section II. No information is provided on how protection of those resources will be assured once the land is in private ownership. Information is needed on specific funding, management techniques and protection in perpetuity of these sensitive resources, e. g., conservation easements as well as restrictions on certain uses.
- Chevron Parcel–The Chevron parcel is a proposed donation from the proponent to the BLM: this suggests the appraisals are likely complete and values agreed upon. If this is the case, the appraisals should have been included as appendices to the DEIS. Secondly, there is little discussion about the characteristics of the parcel and its resource values. This parcel needs to have the same analysis as the other BVR parcels to provide assurance there are no negative impacts.
- Processing costs and funding – Include the costs to the BLM and the costs to the proponent of all work related to this land exchange to this point including scoping, meetings, coordination and preparation of reports and DEIS. This information is in the Feasibility Analysis, which should have been posted to the weblink along with the DEIS. However, this information is from no later than December, 2004 (when the FA was signed), so updated information on the agency’s costs is needed.
- The DEIS does not state the land-tenure categories of the federal parcels.

- In early June 2018, Colorado Wild Public Lands submitted FOIA requests for further information that have not yet been received at the time of submittal. Not having the detailed qualitative information from the requested documents has hampered our ability to thoroughly analyze the impacts of the proposed exchange. The DEIS described many of the documents we requested as “in the project file”, suggesting that the agency has ready access to them.
- There is no response to the scoping comments submitted in May-June of 2016.
- Information on additional beneficiaries and related agreements -There are no details regarding the arrangements between the proponent and the three third-party beneficiaries of the land exchange. The public has a right to know whether or not there is any profit associated with these outside transactions on public lands. The proposed transactions are as follows: Parcel K to Blue Valley Acres HOA, part of Parcel C to Sheephorn Ranch, and Parcel J to Skylark Ranch. BVR 2 is owned now by Summit county with an option for BVR to purchase and convey to USFS via BLM. There should be multiple agreements for these conveyances, and drafts should be in a DEIS appendix.
- Mineral Resources on Private Lands to be Exchanged - The Feasibility Analysis from 2004 states that the State of Colorado “reserved all rights to any and all minerals, ore . . . oil and gas and other like substances in or under said land, the rights of ingress and egress for the purpose of mining . . . ” for a portion of BVR parcel 1. (FA at 17). There are also some reserved mineral interests on BVR parcel 3 (FA, 18). The DEIS contains no discussion of mineral potential on non-federal parcels, as the mineral reports on non-federal parcels have not yet been done. (DEIS 3-139, 3-169). Given that non-federal parcels have mineral interests held by third parties, BLM should inform the public about potential disruptive uses of the lands they receive in the exchange before it occurs, so that they can weigh in on whether the benefits of acquiring the property outweigh the potential for future disruption of the public enjoyment of the lands. This potential disruption could impact the value of these lands to the public.

II. THE PUBLIC INTEREST OF THE PROPOSED EXCHANGE IS QUESTIONABLE

INTRODUCTION.

The governing statute for BLM land exchanges, the Federal Land Policy and Management Act, declares the following policy:

the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest.

43 U. S. C. 1701(a)(1). This act also states that the values of federal land to be traded away must not be more valuable than the lands to be acquired. 43 U. S. C. 1716. This is further detailed in BLM's land exchange regulations:

Determination of public interest. The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

43 CFR 2200.0-6(b).

We suggest that as the two alternatives exist currently, Alternative 1 – No Action, is the alternative that would best serve the public interest, as BLM Parcels G, H and I have high natural values and critical locations in maintaining current public access to and use of the Blue River. We recognize that the proponent has done additional work and included

further mitigation measures in this proposal. In particular, we commend placing a permanent easement for the Spring Creek bridge take-out and associated facilities. Should the work on the proposed exchange move forward, we have included recommendations regarding further study of resources, and obtaining permanent assurances for proposed resource protection, public access, use, recreation facilities and management, as discussed below.

A. VEGETATION - The DEIS states that “there are no federally threatened or endangered plants . . . on any of the exchange parcels” (DEIS 3-126). However, there is Harrington Penstemon, a species identified by both BLM and the Forest Service as “sensitive”, on federal parcels G, H, I and K. According to the document, “the exchange would result in a net loss of 7 acres of *Penstemon Harringtonii* habitat for lands managed by the BLM.” (DEIS 3-129)

While the agency’s assertion that the uses that occur on the lands in the exchange will not likely change very much, it is also true that there are fewer requirements for protections of natural resources on private property compared to BLM lands. While these 7 acres of sensitive plant habitat are under federal jurisdiction, the BLM has the authority to manage them and the surrounding lands in a manner that protects the plants; the land exchange would leave this entirely to the discretion of the landowners. BLM G, H, I and K should only be conveyed with a requirement for protective conservation easements.¹ Additionally, the DEIS does not include discussion of the cumulative loss of Penstemon habitat over multiple agency actions. (See Section for more about cumulative effects.)

B. WATER RESOURCES: THE NO ACTION ALTERNATIVE BETTER SERVES THE PUBLIC INTEREST

The land exchange would result in a net loss of:

- 6006 linear feet (>1 mile) of stream frontage (DEIS 3-147, 151)
- 61.8 acres of wetlands (DEIS 3-167)
- 4.6 acres of riparian habitat (DEIS 3- 171)
- 0.03 acres of fen habitat (DEIS 3-170)
- 3.2 acres of aquatic habitat (DEIS 3-171)

¹ The BLM clearly has the authority to restrict use of land exchanged to private interests:

Reservations or restrictions in the public interest. In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate.

This would adversely affect recreational opportunities. Recreation, especially fishing and boating, is a major use of the area of the land exchange. See further discussion in section III below.

This loss of wetlands and riparian areas is in conflict with:

“an important RMP goal to maintain proper functioning condition of riparian vegetation with management actions focused on . . . protection of wetlands . . .”(DEIS 3-157)

The loss of wetlands, with no conditions requiring their protection, appears to violate at least the spirit of Executive Order 11990:

When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

E. O. 11990, May 24, 1977, 42 Fed Reg 26961, section 4.

Fens are a particularly rare and important type of wetland. As the Environmental Protection Agency (EPA) notes,

Because of the large historical loss of this ecosystem type, remaining fens are that much more rare, and it is crucial to protect them.

EPA’s wetlands website at: <https://www.epa.gov/wetlands/wetlands-classification-and-types#fens>. This site also notes that “up to 10,000 years are required to form a fen naturally.” Ibid.

There are five fens included in the proposed land exchange, four on BLM C and one on BVR 3. These are very unique resources, and they receive special protections by the U.S. Army Corps of Engineers, charged with enforcing Section 404 of the Clean Water Act. Under the status quo, two of the four fens on BLM C do not comply with PLH Standard 2 due to grazing. However, federal ownership could allow future BLM restrictions on livestock grazing and other public uses, based on future assessments; the land exchange would eliminate this opportunity.

There may be no immediate threat of loss of, or damage to, fens and other wetland types by the proposed land exchange, but adverse impacts to wetlands are much more likely to occur on private lands in the long term. The BLM should either not incur a net loss of wetlands, especially fens, in the land exchange, or place restrictions on the use of those wetlands exchanged to private. See footnote 1 and discussion in section V below.

C. PUBLIC LAND HEALTH STANDARDS

“Standards describe the conditions needed to sustain public land health . . . “(DEIS 2-14).

These standards address things like soil permeability, healthy plant communities and water quality. PLH Standards 1, 2, 3 and 5 all affect the overall water quality of watersheds and aquatic resources. The PLH standards help to guide management policies for the RMP, and the agency has the responsibility and the authority to apply them to grazing, recreation and resource extraction management.

Public Land Health Standard 2 This is a measurement of the health of riparian ecosystems:

“...riparian systems associated with both running and standing water function properly, and have the ability to recover from major disturbance (such as fire, severe grazing, or 100 year floods). Riparian vegetation captures sediment, and provides forage, habitat and biodiversity. Water quality is improved or maintained. Stable soils store and release water slowly.” DEIS 3-172

Standard 2 describes habitat that is essential to the water quality and subsequent biodiversity of a given watershed. It is affected by PLH Standards 1 and 3, soil permeability and healthy plant communities, respectively.

Under the status quo,

“Most of the federal parcels meet PLH Standard 2 . . . they are largely dominated by native plants that are vigorous and desirable, with appropriate structural diversity, adequate composition, cover and density. “ (DEIS 3-173)

Because the status quo includes more wetlands and riparian habitats under federal stewardship than the proposed action would, larger acreages of public lands currently benefit from the RMP’s direction to achieve proper functioning condition and meet PLHS 2. RMP at 14.

D. LIVESTOCK GRAZING – The land exchange would allow less management of livestock for protection of water resources, as the land exchange would leave fewer of these resources under federal management. Grazing is having an impact on land health. Grazing occurs on BLM parcels B, C, F, G, H, and I and on BVR 1 and 8. (DEIS at 3-52, 3-55) There are potential grazing impacts on three of these six parcels based on the BLM’s assessment of the parcels’ compliance with the various PLH Standards.

BLM C is not meeting riparian standards (2) due to livestock damage to fens located there (less than ½ acre). (DEIS 3-170) BVR 8 is out of compliance with PLH Standards 1(soil permeability), 3 (healthy plant and animal communities) and 4 (habitat necessary to sustain threatened, endangered or sensitive species) (DEIS 3-54).

“the Blue River in the analysis area has been affected by past grazing and farming practices . . . and by an over-widened channel, which have contributed to erosion and sediment accumulation. In the vicinity just downstream of BLM I . . . bank erosion is contributing . . . sediment . . . into the river. Therefore, portions of the Blue River could be classified as Functioning At Risk... Currently, portions of the Blue River in the vicinity of BVR-8 could be classified as Functioning at Risk due to the bank erosion and sediment accumulation described above.” DEIS 3-173 [BVR 8 is just downstream of BLM I.]

Wetlands and riparian areas are like giant sponges; they work in conjunction with soil permeability to protect the quality and quantity of available water resources, by holding water and filtering sediments and pollutants from it. Impairment of these resources through uses such as grazing affects water quality. Livestock grazing can also affect water quality through manure, which becomes a point source pollutant when water running through it enters streambeds either directly or through return irrigation ditches.

While some landowners may choose to employ grazing management practices to protect water resources, they are not required to do so.² Because the land exchange would result in a net loss of all water resources, the status quo applies protective management, or at least the possibility of it, consistent with public standards, to a larger quantity of water resources and grazing acreage, making the No Action Alternative the preferred one vis a vis livestock grazing impacts on water quality.

²Indeed, the DEIS states that “it should be noted that many land uses that contribute to non-point source pollution on private lands are not regulated.” Id. at 3-172.

E. PALEONTOLOGICAL RESOURCES - Portions of BLM parcels G, H, K, and I are in Potential Fossil Yield Classification (PFYC) 5 (DEIS at 3-67), under which

The probability for impacting significant paleontological resources is high. The area should be assessed prior to land tenure adjustments. Pre-work surveys are usually needed and on-site monitoring may be necessary during land use activities. Avoidance or resource preservation through controlled access, designation of areas of avoidance, or special management designations should be considered.

Id. at 3-65.

Parcel K would be conveyed to Blue Valley Acres subdivision #2, where ground disturbance could occur for a “community purpose” such as a meeting hall or ball fields. DEIS at 3-68. This could expose and damage fossils.

For resources on federal land, the Paleontological Resources Preservation Act applies. Under this act, fossil resources on federal land are protected by the following:

In General- A person may not--

(1) excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on Federal land unless such activity is conducted in accordance with this subtitle ;

(2) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from Federal land in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this subtitle; or

(3) sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal land.

Omnibus Public Land Management Act of 2009, P.L. 111-01, Subtitle D, Section 6306(a). However, the resources would lose this protection with transfer of parcels with areas in PFYC 5 to private interests, especially parcel K. Making this parcel “subject to a field survey

by a BLM permitted paleontologist” (DEIS at 3-199) would not necessarily ensure that any fossil resources would be protected after the parcel was transferred to the subdivision.

F. RESIDENTIAL DEVELOPMENT – Since under the proposed land exchange, the BLM lands are being conveyed with no requirements for conservation on them, there is potential for residential development. This could impact water quality through improper well use, soil erosion from construction, and point source pollution from landscaping. While it is unlikely that the current owner of the BVR would undertake residential development, this potential is the primary driver of the BVR lands’ value and future owners may wish to take advantage of this.

G. MINERAL DEVELOPMENT - The proposed land exchange would convey leasable minerals (oil and gas) and salable minerals (sand and gravel) on BLM parcels G, H, I, J and K out of public ownership. See DEIS at 3- 133 through -136. While it is unlikely that the current owner would develop these mineral resources, there is nothing to prevent future owners from doing so, as the mineral resources are potentially significant, and will be made more economically viable through assemblage with private property that can provide and enhance vehicular access to the resources. Though heavily regulated, development of these resources, or failure to undertake reclamation from their development could have adverse impacts on water quality in the both the Blue and Colorado River watersheds.

According to DEIS p. 3-139,

Because BLM-K has a potential hydrocarbon trapping structure and some potential for oil and gas production, the Mineral Potential Report recommends that the leasable mineral estate be retained until the potential for oil and gas production is evaluated.

It is not in the public interest to trade away parcels with potential mineral value without receiving lands with comparable value in return.

H. WATER RIGHTS AND USE - Generally speaking, there would be a net public gain of water rights. The exchange would convey more cfs to the public than the BVR will receive, and the public will benefit from the relinquishment of the BLM I water rights to the Blue River.

There is however a lost opportunity under the exchange to work with the Colorado Water Trust to use the water rights on now public parcel J for in-stream flow. (DEIS 3-144) Moreover, Since BLM acquired Parcel J through a previous land exchange, we have requested information from the administrative record for that exchange in order to

ascertain what the BLM's motivations were for seeking to obtain this parcel for public ownership. It is possible, that the agency's intent was to utilize these water rights for a specific purpose. Without knowing what motivated the agency to acquire the property in the first place, it is difficult to know whether conveyance to a private party serves the public interest.

I. WILDLIFE IMPACTS - The DEIS does not mention bighorn sheep, yet this species is known to be present in the general area of Green Mountain. It is possible that sheep come down to the river for watering. If so, they could be affected by public use, particularly for hunting, of the now-private parcels that would be transferred to the BLM, and by the proposed trail from BVR 10. This potential effect, and any other impacts to sheep, should be addressed in the EIS.

There is elk winter range on all parcels involved in the proposed exchange. DEIS at 3-86. The exchange would result in a net gain of 273 acres of this habitat in public ownership. Ibid. However, there would be a considerable (408 acres) loss of winter concentration area, and smaller losses of severe winter range and production (calving) area. Ibid. For mule deer, there would be sizable gains of winter range, winter concentration area, and critical winter range, and a loss of severe winter range. Ibid. The bottom line would be a net gain for deer winter range, but a loss for elk, as there would be a decrease of the latter's most important winter ranges in public ownership.

The proposed exchange would appear to be a net gain for wildlife because of the gain of 299 acres of habitat for the sensitive (both Forest Service and BLM) species greater sage grouse. See DEIS at 3-104. But it would be helpful if the EIS analyzed and disclosed the relative values of the habitat involved in the exchange.

The DEIS does note that both priority habitat management areas (PHMA) and general habitat management areas (GHMA) would be exchanged. Ibid. However, not all PHMA or GHMA are necessarily equal, as the value of the habitat depends in part of how big of a block it is part of. Or stated another way, small, isolated parcels of habitat would not be very valuable to the species. Thus an analysis of the sage grouse habitat in the parcels proposed for exchange (both ways) would be helpful in assessing the public interest.

We have requested from the BLM documents relating to the proposed land exchange, including the biological assessment and biological evaluation. Once we receive and review these documents, we may have additional comments on impacts to wildlife based on the qualitative information within those documents which has not been available to us for this comment period.

J. THE CONVEYANCE OF PARCEL J IS NOT IN ACCORDANCE WITH FLPMA - BLM acquired Parcel J through a previous land exchange. According to Section 205 of FLPMA:

(c) Except as provided in subsection (e) of this section [P.L. 99-632, 1986], lands and interests in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. 43 USC 1715(c)

Parcel J's conveyance is contrary to this section of FLPMA; the DEIS does not include any details as to why BLM accepted this parcel in the previous exchange; thus it is not possible to assess whether its disposition, even if allowed through exception, is in the public interest.

V. RECREATION AND THE BLUE RIVER

A. OVERVIEW - The net loss of over 1 mile of stream frontage and 3.2 acres of aquatic habitat means a loss of water-based recreation opportunities under the proposed land exchange. Not only would there be less area to access water to play in, but the remaining opportunities would mostly be concentrated in one area, BVR-8. An easement would be provided at the Spring Creek Bridge where use is currently allowed.

Mitigation for loss of Blue River access on BLM parcels G, H, and especially I, depends on construction of the proposed recreation design features and the proposed trail on national forest land. DEIS at 3-28, 3-29. However, the implementation of these features is not assured, as a memorandum of understanding, yet to be signed, would be needed to assure funding, construction, and management of these features. DEIS at 2-7, 3-35. Approval of the proposed trail would require a separate analysis (NEPA) and decision by the White River National Forest. DEIS at 3-35.

Approval of the MOU and trail construction can thus not be assured at this time. And even if these approvals occur, it could be some time after the land exchange is consummated before the design features and trail are constructed. In the meantime, users would be deprived of use of the Blue River, or at least their already limited access would be reduced.

Overall, the land exchange could degrade the user experience on the Blue River unless further assurance are put in place, including a means of guaranteeing the public will be able to continue to use the river for recreational, floating and fishing purposes without encumbrances such as fences or habitat improvements.

B. THE BLM SHOULD NOT TRANSFER/LOSE PARCELS G, H AND I, WITHOUT FURTHER GUARANTEES OF PUBLIC USE OF THE RIVER AND MITIGATION MEASURES

1. Blue River Frontage - Parcels G, H and I include a total river frontage of 6,406 linear feet. Parcel I is currently accessible from a public road and provides foot access to the river. All three parcels provide opportunities along the river for floaters to stop, rest or walk around on shore. BVR-8 includes 5,068 feet river frontage. The net loss of Blue River frontage would be 1,337 feet and the parcel received in exchange would concentrate the river frontage in one small area.

In summary, the BLM would transfer ownership of 6,406 linear feet of the Blue River on Parcels BLM- G, BLM-H and BLM-I, and acquire 5,069 linear feet of the Blue River on BVR-8, for a net loss of 1,337 linear feet of this river. With respect to other perennial streams, the BLM would give up ownership of 1,480 linear feet of King Creek in BLM-G. For intermittent drainages, there would be a net loss of 3,189 linear feet. The total net loss of river, perennial streams and intermittent drainages would be 6,006 linear feet.

DEIS at 3-171

2. Public Access and Use of Public Lands on the Blue River - During the May-June 2016 scoping period, at minimum 14 people/groups submitted public comments on the need to keep parcels, G, H and I, for reasons including the importance of public use of that stretch of Blue River, concern for a too-long float without stopping, and potential diminution of public use and experience of the Blue River. Current activities include fishing and floating and the question was asked why not make improvements to the current situation, instead of giving away public lands?

Almost all the comments against the exchange focused on the issue of loss of public lands on the river that are currently used by floaters and fishermen. One main point was that by removing these lands from public ownership, the experience of the float along the river would be significantly changed.

Currently, travelling downstream there are opportunities to stop on BLM parcels after putting-in below Green River Dam. Without BLM parcels G and H, there would be a longer continuous float distance to the take-out.

The public would forego opportunities to enjoy 6,406 feet of river frontage of public lands, dispersed along three or more stops, plus the adjoining land that provides further exploring opportunities.

In addition:

This stretch of the Blue River on BLM-I is designated as “Gold Medal” trout fishing and is overlapped by the Upper Colorado SRMA.

DEIS at 3-21

Recent public discussion, much of which echoes the above concerns, is available online at <http://www.mountainbuzz.com/forums/f42/blue-river-land-swap-update-92970.html>

3. KFO 2015 Record of Decision and Approved Resource Management Plan (2015 RMP) - There are significant natural values associated with the BLM parcels located close to the river. The 2015 RMP, (pages 53 and 54) identifies BLM lands with important values as being retention areas. This means that such lands would NOT be available for exchange. One of the criteria for identifying retention areas is “all lands within 0.5 mile of the Blue and Colorado Rivers”. Parcels G, H and I are within this zone, being located on the Blue River. Parcels J also meets this criteria, being next to the Colorado River. However, per the 2015 RMP, exceptions may include:

...lands on the list of Retention Areas included in a proposed land exchange for which an agreement to initiate an exchange was approved before the date of the Notice of Intent to prepare the DRMP/DEIS.

Per the DEIS, the Blue Valley Land Exchange was originally initiated in 2005. The Notice of Intent to prepare the [Kremmling] DRMP/DEIS was published in the Federal Register in 2006. Thus, despite recognition of the values that would make Parcels G, H, I, J and K retention areas, they were removed from that status due to a dating rule.

C. MEASURES OFFERED AS MITIGATION FOR LOSS OF BLM PARCELS NEED TO BE FURTHER DEVELOPED

1. The proposed exchange of public river frontage/access/use for hunting areas is not an equitable exchange. - Existing river users lose their current rights to a different user group (hunters) who gain additional benefits. There is no equitable compensation to the public river users who have lost their use.

2. The proposed exchange of public lands, access and use for a “developed recreation” experience is not equitable. - The proponent is proposing to provide developed recreation facilities in exchange for the land they would receive. This does not appear to be an equal exchange as it creates a different set of uses and management issues. There are impacts associated with construction, costs of construction, costs of maintenance and the overall a loss of natural undeveloped open space. Due to the difference in types of facilities and experiences, the users being served will likely be different than the users being displaced.

Furthermore, descriptions of the proposed recreation improvements and the related future ownership, easements, funding and management plan are unclear and therefore difficult to evaluate potential impacts, use and benefits. These need to be more specific, including types and amounts of facilities, costs, locations and especially future funding and management, in order to be evaluated and provide the public assurance of the commitments.

3. The proposed exchange of BLM land for a proposed, more developed access to existing public lands (national forest) needs further study and documentation. - The national forest land near Green Mountain is managed by the Forest Service for deer and elk winter range. Opening the land to increased public use would create additional impacts to natural resources. Potential impacts to, and management of, the national forest land have not been addressed in the DEIS.

If additional access were to be provided, further detail of the design, costs and management need to be provided along with a specific commitment from the proponent. The trail appears to traverse steep slopes to reach the Blue River, located in a tight canyon. The DEIS describes additional public access to river frontage. How much more accessible will this area be, given that it is in a steep canyon? Additionally, this land has always been in public ownership and is accessible from below Green Reservoir where an area is used as a put-in. The DEIS at 3-35 states that the WRNF still needs to do an environmental review on the potential impacts of the proposed trail, so again there is no certainty as to the viability and benefits of this proposed access. Among known wildlife values of Green Mountain, is the herd of bighorn sheep that lives in the area, per local resident, Dan Campbell.

It seems there may be a misunderstanding among members of the public who supported the exchange based on information that:

“...the current ½ or ¾ mile of river frontage/access is being exchanged to gain 2.5 miles of frontage/access”.

Given the above analysis, this information appears to be incorrect.

V. CONSERVATION EASEMENTS OR OTHER PROTECTIVE MEASURES ARE NEEDED FOR SOME PARCELS PROPOSED FOR EXCHANGE OUT OF PUBLIC OWNERSHIP

While the agency’s assertion that the uses that occur on the lands in the exchange will not likely change very much, it is also true that there are fewer requirements for protections of natural resources on private property. A major flaw in this proposed land exchange is the lack of required conservation easements or other instruments to protect some of the valuable, and even unusual, public resources the land exchange will convey into private ownership. Again, BLM clearly has the authority to use such instruments under 43 CFR 2200.0-6(i).

Ideally, these documents would have already been drafted for public scrutiny and would be placed in escrow at the release of an ROD, pending completion of the land exchange. However, we see no evidence the BLM intends to apply easements or other protective measures to parcels traded to private interests.

If the land exchange is approved, the following resources should be protected by conservation easements:

- *Harrington Penstemon* – Under the status quo, 7.3 acres of occupied *P. harringtonii* habitat are under federal jurisdiction; the BLM has the authority to manage them and the surrounding lands in a manner that protects the plants, i. e, require fencing and certain grazing practices; the land exchange would leave this entirely to the discretion of the landowners and receive only 0.3 acres of occupied habitat in return. DEIS at 3-129. BLM G, H, I and K should only be conveyed with a requirement for protective conservation easements. Additionally, the DEIS does not include discussion of the cumulative loss of Penstemon habitat over multiple agency actions. (See Section for more about cumulative effects.)
- *Fens* – BVR and Sheephorn Ranches should be required to have conservation easements ensuring that livestock are fenced out of the fens on Parcel C. If the agency is going to trade these unique and unusual resources out of federal ownership, then it should require both restoration and protection through a conservation easement for the two fens that Sheephorn Ranch will acquire. See

DEIS at 3-170. And future agency management of BVR 3 must include improvements and protections of the fen on those lands as needed.

- *Water, wetlands and riparian* - DEIS at 3-174. Alt 2 would result in a net loss of 61.8 acres of wetlands, 4.6 acres of riparian habitat, and 3.2 acres of aquatic habitat. DEIS at 3-168. The DEIS states: “the USACE policy generally requires mitigation for wetland impacts greater than 0.10 acre”. Mitigation can include the construction of new wetlands to replace those that were lost . . . the restoration of a degraded wetland, or a combination of these.” DEIS 3-174 Absent this mitigation, Executive Order 11990 “directs federal agencies to . . . withhold such properties from disposal.” (DEIS 3-156; see also E. O. 11990 section 4) Similar to the protection for fens discussed above, the recipients of the federal land containing wetlands should be required to restore and protect wetlands as appropriate, as a condition of receiving these properties.
- BVR should be required to have conservation easements on Parcels G, H, I and J to discourage livestock grazing in riparian areas, protect *H. penstemon* plants and habitat, prohibit the separation of water rights from the parcels, prohibit residential development in riparian areas and view planes, and prohibit the development of leasable and salable mineral resources.

VI. VALUATION

A. RECREATION AND ASSEMBLAGE AS HIGHEST AND BEST USE OF BLM G, H AND I

1. Recreation - These three parcels are the heart of the exchange; they are by far the most valuable of the public parcels as far as the proponent is concerned as their acquisition will give him total control of almost 20 linear miles of a Gold Medal fishing resource. Ironically, this value is exactly the same for the public. BLM G and H are key parcels for those who wish to float this section of the river; while it is still possible to do so without the BLM parcels; it is improbable that people will, as the land exchange will eliminate any stopping points, causing one to spend 8 hours in a boat. Parcel I is downstream of the proponent’s fish habitat improvements, and the current public access to that parcel is also access to the proponent’s trophy sized trout.

CWPL has been reaching out to anglers asking whether they use this now public amenity and, despite BLMs assertion that this is stretch is little used, we are finding that people come from all over the state to float and fish this river stretch. Other people have told us that they have not floated this stretch, but they are aware of it and would like to. This Blue River run has a following, and BLM should not

minimize that following. The recreational value of G, H and I are precisely what makes them attractive targets for assemblage with BVR. As such, the appraisals should not undervalue the recreational amenities of G, H and I.

2. Assemblage - When one looks at these parcels on a map, their assemblage value is obvious; they are surrounded by or adjacent to the Blue Valley Ranch; this is also true of BLM A, B, and C and F. Moreover, once included with the BVR and no longer available to the public, they become exponentially more valuable. BVR is already a very large and exclusive property and the land exchange will render it even more so. If the BLM parcels were in private ownership, they would be priced in a manner that would reflect their value to the Blue Valley Ranch; the smart willing seller, would bet that BVR would spend a lot of money to ensure that no one else would become the owner of those properties and the appraisals should consider the value of this exclusivity.

A large part of the real estate appeal in the area of the BVR is the exclusive fishing opportunities available to owners of riverfront property along this Gold Medal trout stream. The length of riverfront included on one of these properties directly affects the value of that property; even owners in the subdivision adjacent BLM G considered the access to the river from BLM G in their decision to purchase their property.

It would be erroneous to assume that the proponent is not aware of this aspect of the BLM riverfront parcels; though the current value of BVR's large assemblage of real estate is exclusivity to the proponent, he is aware of the future potential of subdividing the property. An unconventional highest and best use is a Ranch Preservation Community (RPC)³. This is a large acreage, limited lot subdivision, in which smaller, deeded acreages are sold as homesites, but include a common interest in a much larger acreage. The appraiser writing the article found that acreage marketed this way sold for substantially more than similar properties marketed as ranch property. Typically, these homesites are marketed for their privacy, exclusivity, natural beauty, recreational opportunities such as hunting and fishing, cultural resources, biodiversity and contiguity to large blocks of public lands – a little like Blue Valley Ranch. Inclusion of G, H, and I not only imbues these parcels with all this potential value, but creates a mini-feedback loop in which the parcels make the Ranch more valuable because there is no longer public access to the river, and that in turn makes the parcels themselves more valuable.

³ Mundy, Bill. "Trophy Property Valuation: A Ranch Case Study", Appraisal Journal, Jan. 1, 2003, p. 2.

3. Access - It is likely that the BLM parcels will be (or perhaps already have been) appraised as not publicly accessible. First of all, that is not quite true, as public access to G and H is the base of most opposition to this exchange; they are both accessible from the river, which is a public thoroughway. Secondly, while it is true that there is no motorized access pre-exchange, their assemblage with BVR will provide motorized access. Consideration of these parcels as inaccessible will artificially deflate their value as the exchange will make them accessible. Under UASFLA, the Highest and Best Use analysis requires detailed consideration of not only the present use of a property, but also any future potential uses.

B. DO NOT UNDERVALUE THE BLM INHOLDINGS - The appraisals should avoid errors of attribution, or potential errors in attribution, resulting from the use of summation appraisal methodology. Adding together the market values of various portions of a proposed land exchange to reach a value conclusion may not appropriately represent the value of the whole. In some instances the use of summation methodology may be appropriate, but this should be clearly supported by market evidence where possible.

The appraisals should pay close attention to the individual values of the smaller public parcels in the exchange, A, B, C, F, and J. Whether they are home to unique resources can impact their individual values. For example, the fens on BLM C are a unique habitat that has both natural and aesthetic values. The DEIS identifies the presence of cultural resources on the BLM lands; their presence could impact the value of these lands.

Additionally, there is a very specialized real estate market that can place surprisingly high values on inholdings, as the threat of their development takes value away from surrounding lands. If these parcels are Category 1 parcels under the land tenure adjustment section of the RMP [the DEIS does not discuss this], these parcels could be sold to parties other than BVR; this possibility of being available to competing parties could affect the value of these smaller acreages; thus, the appraisals should also account for the land tenure status of these parcels.

...C. IMPACT TO THIRD PARTIES - The proposed Blue Valley Ranch land exchange is a transaction between the BLM and Blue Valley Ranch; however, because the assets involved in the transaction are public, there are collateral impacts to parties outside of the exchange and the valuation of the public lands should take this into consideration.

The most obvious impact is the loss of public lands along a gold medal trout stream. BLM G, H, and I offer the same amenities whether they are in public or private ownership – access to the river and enjoyment of the recreational resources the access allows. In conveying these parcels to the Blue Valley Ranch, the BLM eliminates the general public's

ability to enjoy this stretch of river, unless individuals are able and willing to pay the private guides that enjoy leases with the Blue Valley Ranch. In this respect, not only does the land exchange enrich the owners of the Blue Valley Ranch, but it enriches the professional guides who hold leases with BVR for access to this long stretch of the Gold Medal Blue River. Effectively, the land exchange makes a formerly public asset exclusive to those who have the connections or the financial means to access it.

Another collateral impact from the land exchange is the taking of the enjoyment of BLM G from the residents of the 200 homesites in the subdivisions above. Colorado Wild Public Lands has had discussions with homeowners there who bought their property because of the access to BLM G and its location on the river; the homeowners use G extensively as an open space amenity, including the river access. The land exchange would remove this amenity from the neighborhood, negatively impacting their property values. The appraisal of BLM G should acknowledge this impact. One must infer that the purpose of the BLM K “gift” to the Blue Valley Acres #2 subdivision is an attempt to replace this amenity; but, the upland sagebrush habitat on K is not in any way comparable to the river access provided by BLM G. Moreover, the subdivision is already the primary, if not only, beneficiary of BLM K due to its location between the subdivision and adjoining BLM land. In fact, rather than conveying BLM K to BVR, the public might be better served by selling it for residential development.

D. ADDITIONAL PARCELS ACQUIRED THEN TRANSFERRED TO OTHER OWNERSHIP

BLM-K would be donated to the Blue Valley Acres #2 homeowners association. Skylark Ranch and Sheephorn Ranch would incorporate the acquired land into their ranching operations and the Homeowners Association would likely use BLM-K as open space and for recreation.

DEIS at 3-139.

In addition to the above proposed transactions, the Proponent intends to buy BVR-9 from Summit County and transfer it to the USFS via the BLM.

“BVR-9, which is subject to an existing purchase option between BVR and Summit County...” DEIS at 3-3

There needs to be disclosure of the agreements or MOU’s relating to ensuing private to private land exchanges and clarity on the future uses of the parcels. Currently, this information is either missing or unclear in the DEIS. For example, a comment addressed at the open house meeting at Silverthorne library June 4, 2018 suggested that Blue Valley

home owners could potentially put in a fire hall and sell parcels to adjacent landowners to pay for that community asset, as long as it was a community need. This is different than the open space/ recreation uses anticipated in the DEIS and would also affect property values.

VII. THE DEIS DOES NOT ADDRESS CUMULATIVE EFFECTS FULLY, AS IT DOES NOT COMPARE THE DETAILS OF THIS ACTION TO OTHER LAND EXCHANGES

Under the land exchange, there will be several cumulative effects that the DEIS does not discuss, as they limited this section of the analysis to the immediate area of the land exchange.

Since its inception, Colorado Wild Public Lands has participated in the NEPA processes for 3 different land exchanges, including this Blue Valley Ranch exchange. As such, we are already beginning to see patterns of incremental losses of public resources which result in cumulative effects. The environmental analyses (EIS included) are restricted to the vicinity of the proposed action; this narrows the scope of consideration in analyzing the cumulative impacts of these land exchanges and does not present the whole picture of some of these impacts.

The analysis of the loss of Harrington Penstemon habitat is a good example of this. The proposed action in this analysis, exchanging lands with the Blue Valley Ranch, results in a net loss of 7 acres of habitat; this does not seem like much. However, if the scope of analysis were expanded, a different picture might emerge. For example, with the Sutey Ranch Land Exchange 100 miles away in Pitkin County, the BLM traded a minimum of 52.4 acres of *P. harringtonii* habitat in exchange for 1.5 acres on the non-federal exchange lands (Sutey DEA pp. 3-115, 117, and 118). If the agency were tracking these incremental changes on a larger scale, they may find the impacts of these individual actions are having real impacts on the larger landscape.

There is a similar pattern in the treatment of wetlands and riparian habitats in other land exchanges we have analyzed. In the Sutey Ranch land exchange, the public lost 15.6 of 16.6 acres of wetland and riparian habitat (DEA 3-143, 147, 153, 156, 158, 158) and the proposed Buffalo Horn Land Exchange in Rio Blanco and Moffat counties would trade 4 acres for none, a 100% loss to the public (Buffalo Horn EA 65). Again, absent the wider geographic range for the cumulative scope of analysis, the agency has no way to gage the true cumulative impacts of individual actions such as this proposed Blue Valley Ranch Land Exchange.

CONCLUSION

We suggest that as only two alternatives exist currently, Alternative 1 – No Action would better serve the public interest, as BLM Parcels G, H and I, which would all be traded away, have high natural values and critical locations in maintaining current public use of the Blue River.

This land exchange has been under development for several years now and the proponent has included additional features at each step. We recognize increased hunting opportunities through the exchange. We recognize the public benefit of increased water rights and the ability to use them in the stream. However, there is simply no comparable experience to that provided through public ownership of G, H and I. This is a legendary stretch of trout stream in the State of Colorado, and we do not think the loss of these three parcels serves the public interest.

Sincerely,



Franz Froelicher

On behalf of The Colorado Wild Public Lands Board of Directors

Website: www.coloradowildpubliclands.org
Mail: PO Box 1772, Basalt, Colorado 81621
coloradowildpubliclands@gmail.com