



## COLORADO WILD PUBLIC LANDS

October 10, 2019

Kremmling Field Office,  
Bureau of Land Management,  
P.O. Box 68,  
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Via e-mail: [kfo\\_webmail@blm.gov](mailto:kfo_webmail@blm.gov)

Dear BLM Kremmling Field Office Staff,

RE: Proposed Blue Valley Land Exchange DEIS and FOIA Information - Comments

Thank you for providing Colorado Wild Public Lands (COWPL) with the FOIA information related to the Draft Environmental Impact Statement (DEIS) for the Proposed Blue Valley Land Exchange, Grand and Summit Counties, Colorado. COWPL has reviewed the information and we are submitting comments on several of the topics as follows:

1. Appraisals
2. Archaeology
3. Recreation
4. Wetlands and Riparian Areas

### **1. APPRAISALS**

The two documents, *Valuation of Real Property Conveyed in an Appraisal Report, June 6, 2017*, for Private Lands, and for Public Lands, were reviewed.

Generally, these appraisals are more considerate of the public values of the public lands than many we have seen. However, there are some treatments of these appraisals that raise questions.

## **THE ASSEMBLAGE POTENTIAL OF BLM PARCELS IS UNDERVALUED**

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. The appraisals ignore future uses of the BLM parcels once conjoined with the Blue Valley Ranch (“BVR”). Post exchange, all the BLM parcels will have access across BVR, making year-round residential development a future use for all of them; yet the appraisals do not consider this use for the BLM parcels.

Assemblage is undervalued on the public lands; despite the enormous value they will convey to the BVR. Assemblage drives this exchange, as it conveys tremendous value to both the public and private lands after this exchange. As discussed in COWPL’s June 18, 2018 comments on the draft EIS, assemblage of the public lands with BVR properties increases the value of the BLM parcels through the conveyance of access from the private lands and the subsequent increase in the potential highest and best use; assemblage also increases the value of the private lands through the exclusivity conveyed to them by closing the public out.

The exclusivity conveyed to BVR through assembling BLM Parcels A, B, C, G, H and I should be considered in the valuation of those parcels. BLM Parcels A, B and C are valued at \$925/acre, ignoring their value to the surrounding BVR, which would likely be wary of a private inholding within their private property.

Alternatively, the appraisals treat the lack of any public access on BVR 10 differently by combining that parcel with BVR 2 and making it worth \$2750/acre, three times the value of the A/B/C parcels which do benefit from (private) vehicular access.

Additionally, the appraiser notes the value of purchasing parcels for assemblage in his comments on comparable sale #19, in which the buyer “paid an assemblage premium”; the appraiser did not use that comparable, despite the likelihood that the proponent of this exchange would also pay “an assemblage premium”. And comparable #24, described as

“no access from public road, dry grazing land, private inholding, highly motivated buyer (for assemblage)” (BVR p. 59)

was not used at all; it describes the conditions of parcels A, B and C, and sold to the motivated buyer for \$1750/acre. So, we now have two indications that the per/acre value of BLM A/B/C should be around \$1750/acre.

When one looks at BLM Parcels G, H, and I on a map, their assemblage value is obvious; they are surrounded by or adjacent to the BVR; 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, all the BLM parcels become exponentially more valuable. BVR is already a very large and exclusive property and the land exchange will render it even more so by eliminating the current public access through the middle of its holdings. If the BLM parcels were in private ownership, they would be priced in a manner that would reflect their value to the BVR; 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. 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.

The proponent is aware of the value of the BLM riverfront parcels; though the current value of BVR's large assemblage of real estate is exclusivity to the proponent, there is enormous value in the potential to subdivide the property. Inclusion of G, H, and I not only imbues these parcels with the potential value of exclusive subdivision, 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. The appraisals ignore G, H, and I's contribution to and benefit from this subdivision potential.

### **THE APPRAISALS TREAT ACCESS DIFFERENTLY**

Despite the UASFLA's stated objective "to protect the public interest" and ensure fair and equitable treatment", the appraiser has used a different approach to access on the BLM parcels than he used on the BVR parcels. The BLM Parcels A, B, and C all received very large discounts due to their inaccessibility (they are accessible via private roads) and were assigned a highest and best use of "assemblage" with BVR with no consideration of their post exchange potential of residential development once conjoined with the BVR and its access. The larger parcel A/B/C received a per acre value of \$925. However, for the similarly endowed BVR 10, the appraiser avoided the lack of access issue altogether by combining it with into a larger parcel with BVR 2, thus imbuing a per acre value of \$2750.

Moreover, there appears to be an access issue with BVR 8, the premium parcel being conveyed back to the public in the exchange; it is not clear whether this parcel has any

vehicular access at all. On p. 19 of the BVR appraisals, the description of exceptions states, "A lack of access to and from any public road, highway or street is noted ... for ... parcel BVR 8 ..."; although the paragraph subsequently states that Parcel 8 does have access, there is no elaboration as to how this was determined. And subsequent references in the appraisals refer to an "unnamed BLM road", which may be unnamed because it is not a designated or sanctioned road.

Regardless of the type of access on the BVR properties, development potential is always the highest and best use on these parcels (with one deed restricted exception) with no consideration for assemblage value. However, the federal appraisals put more value on assemblage than on development potential, regardless of access. Whereas BLM Parcels G and H (with no motorized access from a public road) receive a value of \$4750/acre, BLM I, (with river frontage, hunting, agricultural potential, a development potential of at least 11 homesites and year round vehicular access from a county road) receives a value of only \$3750/acre; with all of this potential, it seems this parcel is undervalued in relation to its upstream neighbors, especially when one compares the premium access to this parcel – year round vehicular access.

Despite the lack of public vehicular access to Parcels G and H, they are the key parcels in this land exchange because they are accessible from the river, and H provides access to the river from the adjacent subdivision road. These two parcels provide the public with the means to a pleasant day on the water without having to spend several hours on the boat with no place to stop and stretch one's legs. G provides access to the river from the adjacent subdivision, a factor that some of those adjacent homeowners considered in purchasing their property. (Note: the appraisals do not address the diminution of these property values once the exchange makes it no longer possible for them to access the river). Conveying Parcels G and H into private ownership gives BVR total control of many miles of Gold Medal fishing. Moreover, the assemblage of these parcels conveys access to them, making them and the adjoining BVR acreage more valuable. Perhaps this curious treatment of assemblage being more valuable than development potential is an attempt to reconcile the important value of these two "inaccessible" parcels of land.

While the appraisals under-value BLM I, which has year-round vehicular access, development potential and river frontage. BVR 8, the parcel being conveyed into public ownership to compensate for the public loss 6400 feet of river frontage, is over-valued. It is appraised at \$9500/acre despite its inferiority in every aspect to BLM I. As mentioned above, BVR 8 may have access from a BLM road (if it is actually a sanctioned road) that receives no winter maintenance; BLM I has year-round access from a county

road. BVR 8 has a development potential of one seasonal home due to the lack of winter maintenance on the access road; BLM I has a year-round development potential of between 11 and 80 homes depending on whether one relies on a 35-acre subdivision or county zoning. BVR 8 has “average” fishing to the centerline of the river; BLM I has “good” fishing on both sides of the river. BLM I also has irrigated hay/pasture, water rights and hunting.

### **BVR 9**

While BVR 9 is treated as a private parcel in the appraisals; it is not, as it is owned by Summit County and the only private interest in this parcel currently is BVRs option to purchase it. Interestingly, the appraisal of BVR 9 seems to ignore both the Summit County purchase of this land \$3184/acre in 2002 (based on work by this same appraiser) and the value of this option, which is the greater of \$600,000 or the appraised value; the appraisal values this parcel at \$330,000. The question this raises is why isn't the value of the option, a price negotiated between a willing buyer and a willing seller, the appraised value. The appraisal's comparison of this parcel with Comparable #1 raises further questions;

“By direct comparison to the subject, only downward adjustments were made for slightly superior location and access. There are no inferior characteristics, and this comparable indicates a market value for the appraised property that would be somewhat less than \$7,334 per acre.” (BVR p. 97)

Comparable #1 is also owned by Summit County, who, per the Summit County Open Space Director, purchased the property for \$2.8 million, not \$2 million as stated in the summary of the comparable. The additional \$800,000 was for a Conservation Easement on the property, while the \$2 million was for the remaining value of the underlying fee interest, the “carcass”. To use this a comparable for unrestricted land, the appraisal must consider the combined value of the Conservation Easement and the land – the full \$2.8 million. All of this suggests that Summit County may be the beneficiary of a greater value than \$600,000, which the exchange appraisals support.

Meanwhile, BVR 8, privately owned, is valued at the price at which the BVR purchased it. Once again, we see a different treatment of privately and publicly owned lands.

## **OTHER ISSUES**

The appraisals avoid the value of the gravel resources the DEIS identifies on BLM G, H, I, and J. They also avoid the oil and gas potential on BLM K. While they may not be marketable presently, there is a potential financial return to the owners of these properties in the future.

Also, Comparables 6, 10 and 11 were all “friends and family” transactions. #6 was sold to family members for \$655/acre after it would not sell on the open market; the appraisal for the BLM A/B/C larger parcel relied on it, but not the BVR 2/10 larger parcel, despite the common characteristics of A/B/C and 10; the reliance on the comparable for the public and not the private parcel once again underscores the different treatments for the public and private parcels. Comparables 10 and 11 were transactions in which one of the principles of the selling entity was also one of the principles of the buying entity; these transactions occurred between neighbors and the subject property of #10 was never even listed.

## **CONCLUSION**

The appraisals do acknowledge the public values of the public lands in the exchange. However, in a side by side comparison of values, the private parcels seem to receive different treatments vis a vis access and the choice of comparable sales. The difference in treatment undervalues the public lands.

## **2. ARCHAEOLOGY**

- Metcalf, (Slaughter, Staff Archaeologist) 2004, Blue Valley Ranch LEX, Class III Inventory for 9 sites,
- Metcalf, 2004, Plan for Further Study of sites at I
- Metcalf, 2007, Archaeological Testing Report, sites 5GA9, 5GA2286, 5GA3027
- Metcalf Consultants Inc, 2017, Cultural resource inventory and Class I files search for 2017 Blue Valley LEX
- Reply SHPO-BLM, June 12017 - Letter re phone conversation confirming ineligibility of sites for State Historic Register, June 2017

There have been many studies of the archaeological value of the public (BLM) lands included in this proposed exchange, see partial list above. At least four different reports (from 2004 onwards) were included in the FOIA information received. In general, it appears that the Blue River Valley and its terraces still hold evidence of historic occupation including artifacts, tools and remnants of ditches used for agriculture. Per the documented communication with Tribal Groups, the Blue River Valley area

should be considered as a whole (not piecemeal) and as such is an important cultural resource.

In particular, Parcel I has been identified to have high cultural value with the potential to be included in the National Register of Historic Places. Several further studies were conducted and eventually made a finding of non-eligibility. The State Historic Preservation officer is documented as having signed off on allowing Parcel I to be included in the exchange via a telephone call (June 2017). COWPL is still concerned that if the LEX occurs, the loss of Public lands holding the important cultural resources documented in the reports, will not be in the Public interest.

### **3. RECREATION**

COWPL requested the MOU between BLM and BVR regarding the proposed Recreation Design Features (EIS at 2-6 and 2-7). It is our understanding that such a document has not yet been completed. Funds would be needed for design, construction and management of these features and per the DEIS, this aspect of the exchange should be analyzed as a connected action.

### **4. WETLANDS AND RIPARIAN AREAS**

Two reports concerning wetland and riparian area delineation for the Blue Valley Ranch Land Exchange (LEX) were reviewed by Rocky Smith for Colorado Wild Public Lands:

*Wetland, Other Waters of the United States, and Riparian area Delineation*, done by Jacobs Engineering, dated November 11, 2015 (hereafter “Jacobs”); and

*Wetland and Riparian Technical Report*, done by Western Ecological Resources, dated April, 2017 (hereafter “WER”).

Both reports used standard methodology to delineate wetlands in the parcels involved in the proposed Blue Valley Ranch land exchange (LEX): the 1987 U. S. Army Corps of Engineers Wetland Delineation Manual and two supplements to it focused on this region. Surveys for Jacobs were done during October and November, 2012, and included all the parcels proposed for exchange, plus: 44 acres of land adjacent to BVR parcel 8; the seven-acre “Chevron” parcel, also located adjacent to parcel 8; and national forest land in a canyon below Green Mountain Reservoir that is adjacent to

BLM parcels 2 and 10<sup>1</sup>. Additional field investigation for this land outside the proposed exchange parcels was done during October, 2014.

Riparian areas were identified with a “combination of field observations and aerial imagery review”. (Jacobs at 16.)

The Jacobs report also identified “other waters of the United States”, i. e., areas that may be protected under the Clean Water Act (CWA).<sup>2</sup> It did not, however, attempt to make a final determination of whether these waters flowing through or adjacent to the exchange parcels were “jurisdictional”, i. e., whether they came under CWA section 404<sup>3</sup> protection or not. A rule that attempted to better define which waters are jurisdiction (labeled, a little misleadingly, the Clean Water Rule) was issued during the Obama Administration, but has since been rescinded by the current Administration.

One of the characteristics of wetlands is hydrophytic vegetation, i. e., plant, shrub and tree species that need saturated soil, such as willows. The wetlands delineation was done outside the growing season, when plant identification is more difficult. This could affect what wetlands were delineated, as it is our understanding that some species of wetland plants, e. g., willows, can best, or only, be identified when they are flowering. The Jacobs report cites language from the Wetlands Delineation Manual that allows use of data from “National Wetlands Inventory (NWI) maps, soil surveys, and aerial photographs, to make a preliminary hydrophytic [wetland] vegetation determination” when plants are not identifiable due to being covered with snow or ice. (Jacobs at 11.)

It is thus possible, but probably unlikely, that some hydrophytic vegetation was mis-identified, leading to an under-estimation of wetlands.

The WER report was an update and supplement to the delineations documented in Jacobs. WER conducted field studies in August, 2016. In addition, the WER report identifies “those wetlands which are potentially supported by an irrigation-induced hydrology, and estimates their size”. (WER at 1.) Even with this addition, the WER report identifies far fewer acres of wetlands than Jacobs:

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<sup>1</sup> The Chevron parcel was examined because it “could facilitate the implementation of potential design features that would be implemented as part of the land exchange.” Jacobs at 75. Similarly, the other extra lands were evaluated because they could be affected by activities that would occur on these lands after the exchange. Jacobs at 1; see also id. at 81.

<sup>2</sup> See Jacobs at 15 for a full description of other waters of the U, S.

<sup>3</sup> This section of the CWA limits damage to “special aquatic sites”, which are mostly wetlands.

	Wetland Acres	Fen acres	Riparian acres	Other waters of U. S. acres
BLM parcels Jacobs	154.99	0.37	7.40	1.18
BLM parcels, WER	77.7	0.21	6.43	7.39
BVR parcels Jacobs	19.09	0.08	10.5	*
BVR parcels WER	15.9	0.05	5.9	*

Notes:

--Data quoted from Jacobs at 81, WER at 13.

--Fen acreage is included in the overall wetland acreage, at least in WER; not clear in Jacobs.

--\*In Jacobs, "other waters of the U. S." are waters that may be jurisdictional under the CWA, in addition to those delineated as wetlands. WER did not delineate other water of the U. S., though they do report "linear feet of streams and drainages" for each parcel. But this is not the same as other waters of the U. S.

--There were additional acres of wetlands and waters of the US identified in the Chevron and Forest Service parcels, but no fens.

--The acreage numbers from WER are used in the DEIS.

The large difference in wetlands delineation between the two reports is not fully explained. The WER does mention several differences with Jacobs, but they seem minor, except for BLM Parcel I. The east side of this parcel was found not to contain wetlands, dropping the wetland acreage from 43.30 in Jacobs to 5.5 in WER. In Parcel J, the wetland acreage dropped from 73.70 to 59.2, and the 0.28-acre fen was found not to have a deep enough histosol (hydric soil with very high organic matter content) layer to be considered a fen.

Though the acreages vary between the two reports, it is still clear that many more acres of wetlands would be transferred from BLM to private than the other way around.

WER reports that 17.95 acres of the wetlands on the federal parcels are irrigated wetlands, as are 1.36 acres on the private land parcels. (WER at 13.) These are wetlands that exist because irrigated agriculture floods them frequently enough during the growing season that they function as wetlands. However, they are likely lower in

quality than the non-irrigated wetlands because they contain few if any native plant species and nothing resembling a natural plant community. (See WER at 10.) This slightly reduces the inequality of the exchange value of the wetlands that would change ownership with the LEX because there are many more irrigated wetlands on BLM than on private lands involved in the LEX.

Generally, the two reports do not evaluate the quality of the wetlands, though WER notes that parts of two fens on BLM Parcel C have been “extensively trampled” by livestock, and Canada thistle and houndstongue, two species of noxious weeds, have become established at the margins. WER at 4-5, 14. This report notes that wetlands along the Blue River, especially in BLM Parcel I, have been adversely affected by grazing and farming practices, which have led to bank erosion and sediment deposition. (Id. at 14.)

## **CONCLUSION**

The reports appear to thoroughly and adequately examine potential wetlands, fens, and riparian areas on the parcels proposed for the LEX. Not being a wetland scientist, nor having visited the parcels, we cannot say if the delineations are accurate, but they likely are.

Though the differences in acreage of delineated wetlands between the two reports reviewed here is not completely explained, there is no question that the LEX would transfer far more acres of wetlands to private than the BLM would receive from Blue Valley Ranch. This would be a net loss for the public if the LEX was implemented. This is an important factor in determining whether the proposed exchange is in the public interest.

Respectfully submitted by:

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