

BLM KFO
Land Exchange Protest
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Submitted via email:
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Re: Protest of Record of Decision for the Blue Valley Ranch Land Exchange Final
Environmental Impact Statement, United States Department of the Interior, Bureau of Land
Management, Kremmling Field Office, Grand County And Summit County, Colorado
January 2023, DOI/BLM/CO/PL-18/001

Colorado Wild Public Lands Inc. ("CWPL") hereby protests the January 16, 2023 Notice of Decision of the U.S. Bureau of Land Management ("BLM") to approve the Blue Valley Ranch Land Exchange ("Land Exchange") (the "Decision"). The parties to the Land Exchange are BLM and GALLOWAY, INC. A DELAWARE CORPORATION (owner of Blue Valley Ranch ("BVR")) ("Proponent"). BLM's Decision approves an exchange of 9 parcels of Federal lands totaling 1,489 acres (referred to as Parcels A, B, C, F, G, H, I, J, and K) for 9 parcels of non-Federal lands totaling 1,830 acres owned by Proponent (referred to as Parcels 1, 2A, 2B, 3, 4, 5, 7, 8, 9, and 10). In addition, Proponent will donate a portion of BVR-2 totaling 165.3 acres and a cash equalization check will be paid to the United States Treasury for \$5,000 to make up the difference in appraisal values.

BLM's Decision is predicated on a May 2018 Draft Environmental Impact Statement ("DEIS"), an April 2021 Final Environmental Impact Statement ("FEIS"), and a January 2023 Record of Decision for the FEIS ("ROD"), all undertaken pursuant to the National Environmental Policy Act ("NEPA"). In addition, BLM obtained appraisals of the market value of the federal and non-federal parcels, dated June 6, 2017. CWPL submitted comments and associated exhibits to the DEIS on June 22, 2018, to the FEIS on July 31, 2021, and to appraisal and other supplemental documents on October 10, 2019¹. We incorporate those comments and exhibits in this Protest by reference.

This Protest raises issues under the Federal Land Policy and Management Act ("FLPMA"), NEPA, and BLM's Land Exchange Handbook. Because the Land Exchange does not comply with these laws, BLM should reconsider the Decision. Specifically, given the illegalities identified herein, the agency should withdraw the Decision approving the land exchange,

¹ CWPL received these documents after the close of the comment period on the DEIS, subsequent to a June 2018 FOIA request for them.

update the relevant environmental and socioeconomic analyses (including land appraisals), and provide a meaningful opportunity for public review and comment.

CWPL lodges this Protest pursuant to, and under the authority of, 43 C.F.R. §§ 2201.7- 1(b) and 2201.7-2, and the BLM's Land Exchange Handbook (H-2200-1), Chapter 9(F). In accordance with BLM regulation, 43 C.F.R. § 2201.7-2, and the agency's January 24, 2023 General Public Letter on the Land Exchange's webpage, the filing of this Protest by CWPL stays implementation of the Land Exchange. ***As a result, the exchange of the various parcels involved in BLM's decision cannot be completed until this Protest and, if filed, an administrative appeal to the Interior Board of Land Appeals ("IBLA") are resolved. CWPL files this Protest to ensure it exhausts any and all administrative remedies, to the extent exhaustion is required to challenge a BLM land exchange.***

INTERESTS OF THE PROTESTING PARTY

Colorado Wild Public Lands Inc. ("CWPL") is a 501(c)(3) nonprofit corporation. CWPL's business address is P.O. Box 1772, Basalt, Colorado 81621. Our mission is to protect the quality, size and integrity of Colorado's public lands; we work to keep public lands open and accessible and to maintain the ecological integrity of our public lands and focus on advocating for the public in proposed land exchanges in our state. CWPL's members are concerned citizens who value Colorado's public lands and waters for recreational use, for providing habitat for wildlife, for their wild-land character, and for their economic worth. CWPL advocates for economically and environmentally sensible management of Colorado's public lands and their related resources and assets.

CWPL and its members use and enjoy the federal lands at issue in the Land Exchange and lands adjacent to the private lands that are the subject of the Land Exchange for recreational, educational, aesthetic, and conservation purposes. CWPL and its members have provided comments on the Land Exchange throughout this NEPA process. The Land Exchange will harm CWPL's and its members' interests by conveying publicly accessible public lands to private ownership and by not ensuring that the formerly federal lands are managed to protect natural resources. The Land Exchange injures CWPL and its members because it is poor public policy, violates federal law, and results in the loss of valuable public lands. At a minimum, the BLM should only convey these lands based on competent appraisals and subject to existing public uses and access and to restrictive conservation easements that would protect the important ecological and cultural resources present on the now public parcels.

STATEMENT OF REASONS

BLM Has Ignored NEPA and FLPMA requirements for a Land Exchange by withholding Information from the Public and Underestimating the Public Interest in its Decision to Give Away Immensely Valuable Public Lands in Exchange for Restrictive Access Easements and Questionable Guarantees from the non-Federal Party

I. Violations of NEPA

A. Purpose and Need.

The “Purpose and Need” should not be based solely on the Proponent’s needs. Both the DEIS and FEIS described the Purpose and Need for the proposed action as:

1. Meet objectives from the 2015 Kremmling Resource Management Plan (“RMP”) for wildlife, recreation, public access, and scenic values.
2. Consolidate boundaries associated with, and improve management of, public lands while minimizing and reducing conflict.
3. Improve access to and enhance recreational opportunities on public lands. [DEIS at ES-1 and FEIS at 4].

While these are all legitimate public goals, both documents did describe elements of the exchange driven by the proponent that may not be in the best interest of the public, notably that none of the public resources on the BLM lands would be conveyed subject to the necessary protections of Conservation Easement because the proponent was unwilling to accept those easements. [See Section below]. Additionally, there are elements of the proposed access easements that may allow the proponent to diminish the value of the public amenities the proposed action proposes as mitigation for the public lands and uses traded away in the exchange. [See Section below].

The Record of Decision however removes any doubt about who is driving this exchange. This document states:

“The Purpose and Need for this federal action is to respond to the Proponent’s application for a land exchange.” [ROD at 1]

It does not include the public interest items described in the previous NEPA documents. The document also includes a section named “Meeting the Applicant’s Interests and Objectives” which discusses how the proposed action “support(s) the mission of BVR” [ROD at 10].

While the previous Administration’s CEQ guidance conveniently supported this approach directing agencies to base the Purpose and Need on the goals of the applicant and to include alternatives that meet the needs of the applicant², it is no longer legal under the current CEQ rules.

² “National Environmental Policy Act: Implementing Regulations Revisions.” Council on Environmental Quality, 4/20/2022, Section III(A)(i).

An April 2022 revision makes it clear that the applicant is no longer in charge. EO 13990 directs agencies to “rescind any rules and regulations” implementing the previous administration’s guidance. The current rulemaking removes reference to the goals of the applicant from the definition of “reasonable alternatives”³. Under the current rules, which were in effect at the time of the release of the NOD and ROD, the agency’s deference to the proponent’s needs creates a conflict under NEPA.

B. Important Information was not shared with the Public in a timely manner, thereby thwarting the Public’s ability to engage in fully informed public comment.

- i. Appraisals were not available for comment periods. Despite CWPL requests (both informal and through FOIA) that the agency share the appraisals with the public, the BLM did not release the appraisals to the public until July of 2021, after the close of the comment period for the FEIS. As CWPL has previously commented in depth, as well as later in this document, the appraisals relied upon for approval of this exchange are flawed and outdated. Preventing the public from reviewing and bringing attention to the flaws in these vital documents completely undermines the public engagement necessary for fair land exchange decisions, in violation of NEPA and FLPMA.
- ii. There are numerous details in the DBLEA that may have informed the public about post exchange access to the BLM parcels and may have influenced their assessment of the proposed action. This document was not available to the public during the comment period for the FEIS.⁴ The document describes restrictive future uses on the proposed recreational amenities including temporal restrictions on the use of the Recreation Design Features (“RDF”) on the now public lands, broad discretion for the proponent regarding closure of the RDFs and language that the proponent may use to avoid obligation to construct or endow the RDFs. [See Section IV].
- iii. The October 2020 iteration of the DBLEA indicated that both the Spring Creek Bridge and Pump Station rest stops were to become State Wildlife Areas, which would further restrict their usage. This proposal was not in either the DEIS or the FEIS. The August 2022 draft does not include this language. The Agency must clarify whether the rest stops are still planned for State Wildlife Area

³ Ibid.

⁴ After filing a FOIA complaint in Federal Court, the agency finally released an unredacted copy of this to CWPL in October 2022.

designation and potential access restrictions; if they are, this should have been mentioned in the FEIS and ROD.

C. Supporting Documentation for the FEIS is outdated.

CWPL raised this issue in its July 2021 comments on the FEIS. [CWPL at 4]. These materials include:

- Recreation studies from 2013 [FEIS at 40, 41, 45, 46]
- Traffic Counts from 2016 [FEIS at 32]
- Appraisals from 2017 [CWPL, October 2019]

The FEIS was completed in 2021 and the materials are now almost 2 years older than when we first raised this issue.

D. The Agency has not undertaken a meaningful analysis of Cumulative Impacts.

CWPL commented extensively on the FEIS cumulative impacts analysis in July 2021 [CWPL July 2021 at 25-27]. In those comments we argued that the Agency's practice of limiting this Analysis to a single action ignores the intent of undertaking such analysis; the CEQ guidance on such analysis describes how seeming small and individual actions create big impacts:

"Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." [40 CFR ~ 1508.7].

The FEIS violates NEPA due to the myopic Cumulative impacts analysis describing how "the impacts from an action must overlap in space and time with the direct and indirect effects of the action." [FEIS at 131], which is contrary to NEPA and the CEQ guidance. The agency continues to support its minimal analysis because "An analysis of agency actions outside of the Analysis Area is beyond the scope of this analysis." [FEIS at L-10]

CWPL continues to argue that the purpose of a meaningful cumulative impacts analysis is to look outside the action and the Analysis Area to assess whether these seemingly inconsequential past, present, and reasonably foreseeable actions taken together with other actions are creating impacts. If this action were considered in conjunction with other land exchanges around the state, the agency would notice a net loss of Harrington Penstemon habitat, natural wetlands and riparian areas, cultural resources and stream frontage, sensitive species habitat, and, because it affects the human environment, impacts on quality and types of public access and recreational assets. These losses are why this

organization will continue to admonish the agency for their limited efforts at Cumulative Impacts Analysis.

II. Violations of the Federal Land Policy and Management Act

Under FLPMA, public lands must be retained in federal ownership unless certain conditions are met. 43 U.S.C. §§ 1701(a)(1),(9), 1716(a). First, lands may be disposed of by exchange only if “the public interest will be well served by making the exchange.” 43 U.S.C. § 1716(a); see also 1701(a)(1) (public land must be retained unless disposal will serve the national interest); *Lodge Tower Condo. Ass’n v. Lodge Properties, Inc.*, 85 F.3d 476, 477 (10th Cir. 1996) (“Section 1716 of the Federal Land Policy and Management Act ... authorizes the Department of Interior ... to exchange public lands for private lands if ‘the public interest will be well served by making that exchange.’”). Second, using prescribed standards for determining value under FLPMA, the United States must receive fair market value for public lands and the lands to be exchanged must be of equal value. 43 U.S.C. §§ 1701(9), 1716(b). Finally, BLM must evaluate “the full range of land disposal *and acquisition tools available* to accomplish [its] objectives prior to proceeding with a land exchange proposal.” Land Exchange Handbook at 1-8, Section G(1)(a) (emphasis added).

A. The Land Exchange Does Not Serve the Public Interest.

Before approving a land exchange, BLM is required to make a determination that the proposed land exchange is in “the public interest.” 43 C.F.R. §§ 2200.0-6(b), 2201.7-1(a). This determination requires that BLM:

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 ... [p]rotection 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 ... 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.

43 C.F.R. § 2200.0-6. In evaluating these objectives, BLM must consider both the benefits *and* burdens that might flow from the proposed land exchange. *City of Santa Fe*, 103 IBLA 397 (1988).

The BLM's public-interest determination is guided by a two-pronged test. 43 C.F.R. § 2200.0-6(b)(1)-(2). First, BLM must ensure that "[t]he 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." 43 C.F.R. § 2200.0-6(b)(1). Second, BLM must determine that the intended use of the conveyed federal lands will not "significantly conflict with established management objectives on adjacent Federal lands" 43 C.F.R. § 2200.0-6(b)(2). Additionally, to safeguard the public interest, the BLM is required to "reserve such rights or retain such interest as needed and ... otherwise restrict the use of Federal lands to be exchanged, as appropriate." 43 C.F.R. § 2200.0-6(i). This may include provisions in the conveyance documents that impose restrictions on the use and/or development of lands conveyed out of federal ownership. *Id.*

This public interest test is at the heart of Congress's directive to the federal-land agencies to protect public—rather than private—concerns during and resulting from every land exchange. Accordingly, BLM must support this finding with rationale in the administrative record, and federal courts strictly apply this mandate to protect the public. 43 C.F.R. § 2200.0-6(b) (stating "such finding and the supporting rationale shall be made part of the administrative record.") BLM has violated this mandate. Because its public-interest determination is not supported by the record, it does not support the Land Exchange.

B. The Elements of the Exchange do not Support the Purported Objectives of the Exchange.

i. The Exchange will increase BLM Management responsibilities.

The BLM cites a major reason for the exchange to be to resolve public-private use conflicts [FEIS at ES-1]. Yet in attempting to mitigate the loss to the public, the BLM is creating new opportunities for public-private use conflicts. The exchange proposal to mitigate public loss through access easements over private land will likely lead to only increased public-private conflicts. And by eliminating the dispersed recreation opportunities currently available on BLM G, H, and I and concentrating developed recreation which will require on-going infrastructure maintenance and intensive public management use on BVR 7 and 8, the agency is drastically increasing its management obligations, which is contrary to another goal for the exchange: to "reduce management costs on behalf of the BLM and the other governmental agencies" [ROD at 9]

ii. Conveyance of the Natural Resources on the BLM Parcels does not conform to Agency Planning Guidelines.

Valuable natural resources have been identified on BLM parcels proposed for exchange, including on previously identified "retention" parcels. In particular, there are significant natural values associated with the BLM parcels G, H, and I, located close to the river. The

2015 RMP, (pages 53 and 54) identifies BLM lands with important values as being retention areas; G, H, and I meet those criteria ergo, they should 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. Parcel J along the Colorado River also meets this criteria. According to the ecological guidance, these parcels should remain in public ownership, but the 2015 RMP exempted them specifically because they were identified as part of the land exchange.

Despite recognition of the values that would make Parcels G, H, I, and J retention areas, they were removed from that status due to a dating rule, a machination to avoid guidance that these lands should remain in public ownership.

C. There are Insufficient Protections on the Important Resources on the Public Lands to be Conveyed.

i. Deed Restrictions

Deed restrictions proposed for Parcels C and K, as described in Exhibits I and J, include limiting structures and prohibiting further subdivisions [Draft Binding Land Exchange Agreement (“DBLEA”) at 89 and 91]. There does not appear to be any responsibility for any outside party to enforce these restrictions. At a minimum, conveyance should require recordation of these deed restrictions with Grand County.

ii. Access Easements

Easements for the take-out and rest area near the Spring Creek Road Bridge, the rest stop at the Pump Station parcel together with an access easement across the non-Federal party’s property should be co-held by both a government entity *and* a not for profit under a Memorandum of Understanding (“MOU”) between the entities regarding management and support of the easement. The current plan is for *either* a non-profit or a government entity to hold and manage the easements; however, CWPL is concerned that neither the entity, nor the management terms have yet been determined. [DBLEA at 2]. This leaves the door open for delayed and/or restricted access at the whim of the Proponent.

iii. Conservation Easements

The ROD asserts there will be no degradation of lands through the exchange:

“Federal regulations require that in reaching its decision an agency is to state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and if not, why they were not (40 CFR § 1505.2(c)). Environmental harm under the Proposed Action is not anticipated; hence, means to avoid or minimize environmental harm are not necessary” [ROD at 12]

CWPL disagrees with the notion that no degradation will occur post-exchange and reiterates its concerns about the lack protective restrictions on the public lands conveyed to the proponent; without them, valuable and unusual wildlife and plant habitat, wetlands and fens, and cultural resources will be damaged and lost through future development.

FLPMA regulations state: “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...” [43 CFR 2200.0-6(i)]. And the ROD cites the Agency’s responsibility to manage public lands in a manner that considers “the long-term needs of future generations without permanent impairment of the lands.” [ROD at 12] The agency has clear direction and authority to utilize conservation easements to protect the valuable ecological and cultural resources the exchange will convey to the Proponent.

The Agency’s continuing position that these protections are not necessary are undermined by the repeated statement that:

“Further, establishment of conservation easements on federal lands that would be exchanged under the proposed land exchange would not be possible as BVR has made clear that it would not be willing to exchange lands under these conditions. [FEIS L-3, L-15]

This suggests that facilitating the land exchange is a larger motivator than protecting the resources. The proponent’s refusal to accept lands encumbered by Conservation Easements calls into question their true commitment to conservation, inviting the assumption that the Proponent prioritizes resale and development value over the conservation values of the lands in the exchange.

While the current owner may display conservation tendencies and although there may not be development currently proposed, this argument completely fails to address the concern for ensuring protections if Blue Valley Ranch changes ownership or the owners change their mind about development. Reliance on the continuation of existing uses and an individual landowner’s stewardship practices is no substitute for federal oversight and land management. Development of private property is not an “unforeseen use”; it is an eventual one, even if it is many years in the future. Conservation easements are designed precisely for mitigating such concerns.

We commented extensively in June 2018 and again in July of 2021 that important resources will be conveyed into private ownership without any permanent resource protections and may be damaged or lost. The following is an enumeration of those

resources and why the BLM response to our comments does not afford the necessary protections.

Visual Impacts

Appendix G of the FEIS states the BLM “ensures that the scenic values of the public lands managed by the agency are considered before allowing uses that may have negative visual impacts.” [FEIS at G-2]. By failing to protect the Federal parcels under conservation easement, the BLM is not upholding their duty to ensure the scenic values of the Upper Blue River corridor remain in perpetuity, under the current owner of BVR or the next.

Vegetation

The exchange would result in a net loss of 7 acres of *Penstemon Harringtonii* habitat for lands managed by the BLM.” [FEIS AT A-22]; this plant has special classification from both the BLM and the Forest Service as a sensitive species. While the agency’s assertion that the uses that occur on the lands in the exchange will likely not change very much, 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 to the discretion of the landowners. BLM G, H, I and K should only be conveyed with a requirement for protective conservation easements. Additionally, the FEIS limits discussion of the cumulative loss of *Penstemon* habitat over multiple agency actions to this field office; a true cumulative impacts analysis would acknowledge that actions outside of the immediate area are also endangering habitat for this plant such as in the Berlaimont Estates Access Route project and the Sutey Ranch Land Exchange [See attached CWPL work product Land Exchange Cumulative Impacts].

Critical Elk Habitat

Under the proposed exchange, 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. [DEIS at 3-86]. The imposition of conservation easements would prohibit future development in this habitat.

Wetlands, Aquatic and Riparian Resources

Riparian areas and wetlands are the most productive acres in any western landscape. They often produce several times the amount of forage of surrounding uplands and include most of the plant species diversity on the landscape, despite occupying only 1-4% of the total

land area. This is due, of course, to the presence of water, the most limiting resource in most Western landscapes.

Wetlands and riparian areas also provide important ecosystem services to local communities by slowing water runoff and reducing erosion, filtering and cleaning water runoff before it enters streams, lakes or ponds, and providing habitat and important corridors for wildlife and fish. (<https://bluevalleyranch.com/explore/riparian-wetlands>)

As Blue Valley Ranch states above, riparian areas and wetlands are critical ecosystems. In DEIS comments CWPL noted the net loss of these resources resulting from the proposed exchange. The land exchange would result in a net loss of:

- 6006 linear feet (>1 mile) of stream frontage (FEIS 108)
- 61.8 acres of wetlands (FEIS 118)
- 4.6 acres of riparian habitat (FEIS 121)
- 0.03 acres of fen habitat (FEIS 121)
- 3.2 acres of aquatic habitat (FEIS 122)

none of which would continue to benefit from federal oversight that currently protects them and maintains important habitat, water quality and public land health standards.

The FEIS describes the federal mandate through Executive Order 11990 and the Clean Water Act to retain wetlands and riparian habitats in federal ownership. [FEIS 110-111] It pays particular attention to Executive Order 11990:

When federally owned wetlands or portions of wetlands are proposed for disposal to non-federal public or private parties, Executive Order 11990 directs federal agencies to (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. [FEIS at 110]

and to direction from the 2015 KFO RMP:

“The RMP acknowledges the importance of wetlands and riparian habitats ... In terms of fisheries, perennial water sources (streams, rivers, lakes, ponds, springs, seeps, wetlands, wet meadows, bogs, and fens) and riparian areas are identified as priority habitats that should be protected.” [FEIS at 111]

“As specified in the 2015 RMP, livestock grazing management would be focused on protecting wetlands and riparian values with the objective of achieving Proper Functioning Condition and attainment of Public Land Health Standard 2. Specific

management actions are identified in the 2015 RMP to reduce or limit grazing impacts.” [FEIS at 129]

Under the proposed action, 78 acres of previously protected wetlands would no longer be subject to these controls [FEIS Appendices at A-30].

While describing the agency’s legal and regulatory obligation to protect these critical natural resources, the FEIS includes no details or guarantees as to how such protection will occur post land exchange. BLM continues to rely on the continuation of the proponent’s existing uses, the proponent’s current land stewardship and federal and local land use regulations to mitigate for the public loss of these protected resources [FEIS at L-15].

The FEIS relies on Section 404 permits and local land use regulations instead of Conservation Easements for post-exchange wetlands protections. These regulations are triggered only through a permit application process. Federal and local wetland regulations do not apply if a landowner is not seeking a permit. Given the large acreage of many properties in Colorado, it is easy and common to start up the backhoe and start digging. Even if current and future landowners do seek permits, Section 404 “nationwide” permits are not difficult to get for small projects, and they are not subject to any NEPA review or public comment. It is reasonable to assume at least incremental reductions in wetlands on private property over time.

Though the federal government can levy charges and fines against violators, they are unlikely to do so for any but the most egregious violations. Despite the Agency’s continued assurance that the proponent is dedicated to conservation, it never mentions that proponent has previously been fined for violations of the Clean Water Act.⁵ Additionally, BVR’s man-made wetlands [FEIS at 118] are subject to lesser standards and regulation, making them unsuitable mitigation for the loss of wetlands resulting from the proposed action. Federal and some, but not all local land use codes require mitigation for wetland destruction; but once the natural state has been altered, it takes time for it to return to its former glory, assuming the conditions that favored it to begin with remain unaltered.

Fens

According to the FEIS, the land exchange would result in a net loss of fens under BLM management. Fens are unique and unusual resources that take up to 10,000 years to form [FEIS at L-15]. The FEIS offers no protections for the loss of fens the land exchange would convey into private ownership.

⁵ ⁵ “Filling in Wetlands Proves Very Costly”, Baltimore Sun, April 15, 1991. “Trading Whiz Fined for Wetland Damage”, Washington Post, May 26, 1990.

The Agency has allowed the fens to become degraded through the lessee's grazing practices. Because the fens are classified as Category 1 resources for which "destruction and mitigation of fens is not allowed" [FEIS at 121], EO 11990 charges agency with a responsibility to require improvement of the fens rather than ceding degraded fen resources into private hands thereby removing the federal oversight.

The FEIS refers to a future deed restriction on BLM-C [FEIS at 15] which, might be to protect the fens; the deed restriction would only apply to BVR's conveyance of BLM C to the Sheephorn Ranch, but not its conveyance to BVR. If the agency is relying on this as future protection for the fens, then the deed restriction should apply to any private ownership and from the outset of conveyance into private hands, as there is no guarantee that the transaction between BVR and the third party will occur⁶. Despite CWPL requests to review the agreements between BVR and third-party beneficiaries, BLM has not yet released them⁷. Presumably, the agreement between BVR and Sheephorn contains details of this deed restriction. CWPL considers this non-disclosure a violation of NEPA, due to both the non-disclosure and due to the agency's not demonstrating compliance with EO 11990.

There may be no immediate threat of loss of, or damage to, fens and other wetland types through the proposed land exchange, but adverse impacts to wetlands are much more likely to occur on private lands in the long term, for the reasons above. The BLM should either not incur a net loss of wetlands, especially fens, in the land exchange, or they should place protective restrictions on the use of those wetlands exchanged to private ownership.

Paleontological and Cultural Resources

The FEIS acknowledges the dangers of conveying the multiple paleontological and cultural resources present on the federal lands into private ownership:

"In accordance with Council on Environmental Quality guidance, the BLM has made a good faith effort to explain effects that are not known at this time, acknowledging that resources on federal lands would lose current protections afforded under existing BLM management." [FEIS L-4]

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

⁶ A DBLEA released to CWPL dated October, 2020 includes Exhibit I titled "Sheephorn Ranch Use Restrictions". However the subsequent draft dated July 2022 does not include that Exhibit underscoring our concerns that the fens will be conveyed into private ownership with no protections whatsoever.

⁷ CWPL has submitted 2 FOIA requests for these 3rd party agreements. Additionally the DBLEA requires the proponent to share these agreements with the BLM [July 2022 DBLEA at 3]. As the Agency has cited details of the agreement between BVR and Sheephorn ranch [FEIS at 119], CWPL assumes they have access to it and the other agreements. The Agency should have complied with CWPL's FOIA requests and released the agreements.

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).

Portions of BLM-G, BLM-H, BLM-K and BLM-I, overlap the Niobrara Formation and are Class 5 areas. PFYC guidance recommends that Class 5 areas be assessed prior to land tenure adjustments. The FEIS states that BLM knowledge of the area and museum record searches do not support the likelihood of subsurface paleontological resources being present. (FEIS-65). However, no field studies were conducted for the land exchange.

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. The Blue Valley Metropolitan District Agreement includes no protections. [July 2022 DBLEA at J-1]

In Appendix G, the FEIS characterizes the proposed action’s impacts on cultural resources as “no or negligible ” (FEIS-11). CWPL has anecdotal information that there is a marker on Parcel H for archaeological resources and that there is lithic scatter visible on several of the parcels. Multiple studies of the archaeological value of the public lands indicate that the Blue River Valley and its terraces still hold evidence of historic occupation including artifacts, tools and remnants of ditches used for agriculture. And, 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.⁸

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. Although 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), the public interest would be best served by an conservation easement that would protect this significant historic resource.

D. The conveyance of BLM-J is not in accordance with FLPMA and the land exchange is setting the stage for similar violations in the future.

Because BLM acquired Parcel J through a land exchange, the parcel cannot be conveyed out of public ownership. According to Section 205 of FLPMA:

⁸ Metcalf, 2004, 2007, 2017.

(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)

The FEIS and ROD contain extensive discussion of the Agency's authority to transfer this parcel from public ownership, but these authorities seem to be contrary to this very specific direction in FLPMA.

Parcel J has qualities that are of public value, including:

- Sage Grouse PHMA with "documented occupancy" [FEIS at 82],
- almost 60 acres of wetlands [FEIS at 115],
- 5.375 cfs of water rights, [FEIS at 102] and
- 1383 feet of Colorado River Front at the confluence of Reeder Creek [DEIS at 3-89], that is a well-used fishing spot.
- The sage grouse habitat, wetlands, river frontage and location within the Colorado River SRMA are also identified in the 2015 RMP as reasons for retention.

The Response to Comments describes the Agency's general discretion to dispose of lands under its jurisdiction, not why Parcel J should be excepted from the clear FLPMA direction to retain lands received in an exchange. [FEIS at L 4,5]

Additionally, the public is losing water rights that the FEIS says the BLM does not have the resources to manage;

"Since the parcel was acquired, the lack of BLM resources to manage the irrigated section of the parcel ... make it a costly parcel to manage." [FEIS at 4]

In contrast, when discussing the water rights on the BVR parcels the BLM will receive, the FEIS describes multiple ways the BLM plans to put them to good use:

"BLM would continue to use ... water rights to irrigated native vegetation ... Instead of using irrigation to exclusively support livestock grazing, the BLM would implement irrigation to support livestock grazing and broader objectives, including improving big game habitat and riparian habitat. BLM may also work cooperatively with grazing permittees and other water right owners ...to maximize wildlife and riparian benefits by closely coordinating the timing and location of irrigation practices." [FEIS at 104]

The FEIS does not explain why the water rights on Parcel J could not be put to the same uses. Even if BLM does not want to manage the water rights on the Parcel, it could work with the Colorado Water Trust to use the water rights for in-stream flow.

Most importantly, the conveyance of J underscores the BLM's haphazard approach to what the public receives in land exchanges. The Agency acquired this parcel in a 1999 land exchange with this very same proponent, who, according to this FEIS, did not want it, and if this exchange is approved, the agency is going to give it back to Galloway, Inc, who still does not want it:

“BVR has no interest in obtaining these parcels, but in the interest of agreeing on an exchange that best met the Purpose and Need of both parties, BVR agreed to include them in the exchange. Both BLM-J and BLM-K are difficult to manage as they are surrounded by non-federal lands owned by Skylark Ranch and Blue Valley Acres #2 subdivision, respectively. Upon successful completion of the exchange, BLM-J and BLM-K would be conveyed by BVR to their adjacent landowners (Skylark Ranch and Blue Valley Metropolitan District).” [FEIS at F-3]

Given the tremendous public resources expended in facilitating a land exchange, it is shocking that the agency is not more intentional about what it receives in these land exchanges. If Parcel J is of little importance to the agency, if it is difficult to manage and surrounded by private land, they should not have accepted it in the first place. But they did, and FLPMA says that now that J is public land “it shall remain public lands”. FLPMA's Public Interest requirement for undertaking land exchanges places the onus upon BLM to vet and acquire lands that serve the public interest.

E. Other Exchange Parcels that are of Little Value.

The Agency's justification for conveying Parcel J out of public ownership – a purported change in land management objectives and “a variety of issues [that] have arisen related to the irrigated [lands]” (FEIS Appendices at L-5) – is likely to be used in future land exchanges for other parcels in this exchange.

At least Parcel J has public values on it. There are other parcels in this exchange that appear to have no public or private values, and the FEIS has not addressed why the agency is willing to take them. The BVR-7 easement from Trough Road to public lands near inspiration point provides access to nowhere; according to maps, the tracks accessed via this easement dead end and access steep topography that limits “off piste” exploration⁹. It is unlikely that people will use this “amenity”, unless the agency has plans they have not

⁹ CWPL's July 2021 site visit confirmed this on the ground.

discussed with the public to develop new trails in the area. The appraisal assigned a value of “Zero” to this interest. [Non-Federal Lands Appraisal at 3]

BVR-5 is a two-acre parcel that does not even merit a dot on the vicinity map; the appraisal assigned a value of \$10,000 [Non-Federal Lands Appraisal at 3] to this land with no development right, no water, no grazing potential and an old gravel pit [FEIS at 92]. There is no public value to this land, as there is already good vehicular access to adjacent BLM lands. Acquisition of these parcels in conjunction with the trading of BLM J leave the public wondering whether the agency is really advocating for public interest or just losing at a Monopoly game.

E. The agreements supporting the RDFs do not adequately guarantee the public amenities purported to mitigate the loss of the BLM lands.

i. Design Features Implementation Agreement

The July 2022 DBLEA includes numerous details that could be used in the future to alter and diminish the RDFs intended to reciprocate for the loss of the key BLM lands in the exchange:

- All the agreements are subject to changes between now and the close of the land exchange; the information that is currently available to the public may be incorrect at closing.¹⁰
- The Agency still has not provided design details, estimates of construction and management costs, or details of the bonding arrangement with the proponent to ensure the RDF construction and maintenance will occur. [July 2022 DBLEA at F-13]
- The Proponent has discretion over materials and location of the RDFs and over the design and location of instream habitat improvements [July 2022 DBLEA at F-7]
- The entity(ies) responsible for future management of the Spring Creek Take Out and the Pump House Rest Stop have yet to be determined [July 2022 DBLEA at 3]. The DEIS and FEIS both indicated the Pump House would be managed by the BLM. The uncertainty over the management entities leaves the door open to new agreements and further restrictions in the future.
- The BLM has no right to expand the facilities at the Spring Creek Take Out or Pump House Rest Station if future conditions warrant it. [July 2022 DBLEA at G-6 and H-6]
- The Proponent has the right to alter construction of the RDFs [July 2022 DBLEA at F-7]. They also have significant discretion over enforcement of the easements, including closure. [July 2022 DBLEA at H-7 and I-3]

¹⁰ This information is only publicly available on CWPL’s website as the Agency has not included it on the project website despite having released it to CWPL.

- The West of BVR 10 Fishing Easement extends only to the BLM; if the Agency conveys the land to another entity, the easement is terminated. [July 2022 DBLEA at I-4].

Additionally, the DBLEA makes many references to the Design Features Implementation Agreement (“DFIA”) and includes important descriptive Attachments that are blank:

- Design Features Implementation Agreement Exhibits A (Wildland Hydrology Report), B (Construction Cost Sheet and Endowment) and C (West of Parcel 10 Fishing and Access Area)
- Exhibit B to the Spring Creek Take-Out and Rest Area Easement Agreement describing and depicting the area simply says “TBD”
- Exhibit A to the Pump House Rest Station Agreement (legal description)
- Exhibits C and D to the West of Parcel 10 Fishing and Access Easement Agreement describing the Fishing Easement and Access Easement Areas

These are critical details about what the public is really going to receive in the exchange. The Agency should have it in hand and it should have been available to the public for evaluation with the FEIS.

ii. Green Mountain RDFs

CWPL also believes the RDFs in the Green Mountain area will never come to exist.

Language included in the FEIS and decision documents about the proposed USFS trail does not provide assurance that USFS will consider, much less approve, construct, and manage such a trail which, if not realized, would completely negate the purported benefits of this component of the exchange, including the access easement on BVR-10.

Despite multiple CWPL requests to do so, the Agency still has not documented any communication or coordination with the USFS regarding the purported recreational amenities in the Green Mountain area. The ROD specifies that they will occur “subject to Forest Service review” [ROD at 8]. The proposed trail area crosses bighorn sheep and lynx habitat, and Colorado Parks and Wildlife has come out against these amenities:

“CPW recommend that post-exchange, no additional roads or trails are to be created in the Green Mountain area. A few existing dirt roads and trails exist, some of which are open to motorized use and others that are not. CPW recommends restricting motorized use to roads that are currently open. Additional roads and trails and subsequent recreational use will negatively impact animals on summer and winter ranges.” [FEIS at L-10]

And the DBLEA cites a condition under which the proponent may avoid any obligation to facilitate them:

“the non-Federal Party will provide funding to the USFS for construction of such project as set forth on the Cost Sheet. If such decision to construct a trail has not been issued within three (3) years after the Closing, the non-Federal Party shall have no obligation to fund the construction of such hiking trail.” [DBLEA at F-7]¹¹

Via a February 14, 2023 phone call with Cynthia Ebbert of the Dillon Ranger District, CWPL conducted our own outreach to the USFS in response to the lack of information from the BLM regarding coordination with the Forest Service. Ms. Ebbert mentioned that, until reading recent document releases, the office was unaware of the preexisting ranch road and related access described in the July 2022 DBLEA.

A pedestrian-only trail from the parking lot referenced in subsection (ii) above, along an existing ranch road on BVR-10, to a gate on the west boundary of BVR-10 and the east boundary of the parcel shown on the West of Parcel 10 Depiction [July 2022 DBLEA at F-4]

Upon learning of that component, Ebbert said the Dillon Ranger District have begun to reconsider the need for a USFS trail at all. This trail is far from guaranteed, particularly when considering the three year funding cutoff specified in the DBLEA.

Additionally, the Colorado Department of Natural Resources has previously requested that BLM follow a Colorado Parks and Wildlife document; *Recommendations to Avoid and Minimize Impacts to Wildlife from Land Use Development in Colorado* [See attached CPW Letter to BLM - HPH Transmittal Letter]. This document suggests seasonal closures for bighorn sheep winter range, mule deer severe winter range, and mule deer winter concentration area for any kind of land use/development. Decision documents have failed to mention that, if approved, trail development in the BVR-10 area would fall within these seasonal closure recommendations to reduce impacts to wildlife including mule deer, elk, lynx, bighorn sheep, turkeys, and mountain lions. This would impact the public use and benefit from the trail and must be disclosed.

F. Restrictions attached to the public benefits diminish their public value.

Immensely valuable public lands are to be traded away for restrictive access easements and non-guaranteed infrastructure improvements.

DBLEA at G-17 and H-4 list numerous prohibitions for use of the Spring Creek and Pump Station areas, including “Hunting or fishing on or from the Take-Out Area, and temporal

¹¹ Additionally, this is the first mention of “the cost sheet” in any of the documents so far released to the public.

limitations, “the period from and including Memorial Day up to and including Labor Day of each year,” that do not currently exist.

BLM parcels G, H, and I, , are not currently limited either by usage types or season of use. The concentrated and intensive use that the new Confluence Area and the more remote access from the West of BVR fishing easement are simply not comparable to the experience that the many current users of Parcel I enjoy. Its popularity, due to it is adjacent to a public road, stems from a designated parking area as well as an established trail to and along the river bank and excellent fishing. CWPL continues to maintain that the loss of these amenities is not in the public interest.

DBLEA at I-3 states that “Grantor shall have the right to impose ... rules relating to use of the Easement Areas from time to time to facilitate the [proponent’s] Management Priorities.” Additionally, FEIS Appendices at L-28 dictates that these ranch management activities may include “river improvements, irrigation structure repair, and road maintenance.” This language seems to do nothing to prevent the Non-Federal Party from ambiguously limiting future public access to these easement areas at their will, citing the necessity for ranch management activities. The language should include a list of allowable management activities and descriptions of the times of year these will occur as well as estimates of how long they would take. Additionally, the easements should include a public noticing requirement about these activities in the local papers and radio stations.

Additionally, DBLEA at G-5, H-4, and H-19 states that “Furthermore, Grantor reserves, in its sole discretion and at its sole cost and expense, the right to relocate the Improvements within the Easement Area from time to time.” This language leaves an additional layer of ambiguity that would seem to allow the Non-Federal Party too much freedom to restrict access at their whim. This information is also not indicated in the FEIS, which creates further transparency concerns. The language should be removed from the easements.

One NEPA comment said: “BVR should provide a guarantee to allow float access at flows as low as 350 cfs if this plan is approved. Over the years BVR has continued to build river improvements limiting access to recreational floaters. They build rock “improvements” that make traveling on the river without trespassing harder and harder. Most recently about two years ago they shut off a long channel of the river to floating at any flow”[FEIS at L-3]. The lack of conservation easements and the vague language in the access easements almost guarantee that the proponent will continue to engage in these practices, further limiting the public’s ability to enjoy this stretch of river.

G. 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 DEIS and FEIS discuss that the Non-Federal Party may transfer lands gained to other parties (four parcels and four other parties):

1. Parcel A: The non-Federal Party may convey Parcel C to the neighboring Sheephorn Ranch. [See footnote 6]
2. Parcel I: The non-Federal Party may convey the northern portion of Parcel I adjoining Trough Road to the neighboring landowner, San Toy Land Company, LLC.
3. Parcel J: The non-Federal Party may sell Parcel J to the owners of the adjoining Skylark Ranch “or to an entity such as Skylark Ranch”.¹²
4. Parcel K: The non-Federal Party intends to convey Parcel K to Blue Valley Metropolitan District subject to use restrictions in the conveyance deed that are the same or substantially similar to those set forth in Exhibit I, attached hereto.

The reciprocal conveyance of the numbered BVR parcels for the lettered BLM parcels is the only clear value-for-value property exchange between non-Federal and Federal entities. The additional parties look to acquire portions of BLM Parcels C, I, J, and K, yet they do not appear to be exchanging any land to the BLM. Why are these entities included in the land exchange if they are not exchanging anything in return? And what is the financial arrangement between the proponent, who most of the acreage proposed for exchange to the public and these other parties?

The legal basis and support under which this Federal land is being conveyed to these other non-Federal beneficiaries should be clarified. Additionally, the agreements among these beneficiaries should be available to the public as part of the project documentation.

H. There may be a split mineral estate on the non-federal lands that should be extinguished and/or abandoned.

Throughout the October 2020 draft of the DBLEA, there are several mentions of exceptions for mineral and/or mining rights [at 10, 11, 14 and 16-18]. This raises the question of whether the BLM is accepting lands subject to split mineral estates in violation of FLPMA direction to avoid this. See BLM Land Exchange Handbook H-2200-1, Ch. 1 Sec. G.4.a. In any case, the monetary value of these lands must fully account for any such split estate. Any rights on lands to be acquired by the United States should be extinguished, abandoned

¹² This text serves to emphasize the undesirability of this parcel; the DEIS stated the parcel would be sold to Skylark [at 2-3] but it seems Skylark may no longer be interested. This undermines again the Agency’s choice to accept the parcel in the 1999 exchange and strengthens CWPL’s concern about the future disposition of the parcels discussed previously in Section A.

or purchased by the proponent so they may be conveyed to the BLM prior to the closing of the land exchange.

I. The FEIS obscures the equal value assessment.

i. New appraisals are needed.

The appraisals are dated November 2017; now over 5 years old. No open market real estate transaction would rely on appraisals this old. These would be dated in any real estate market, but the last 24 months has been a particularly robust market in resort communities around the west. The ROD does note that there was a 2021 supplemental report on the appraisals but does not describe the depth of this report. People are flocking to these smaller communities to escape the cities and have greater access to outdoor recreation. This dynamic is making desirable properties, such as BLM parcels G, H and I with riverfront access more expensive due to a limited supply of access to such recreational amenities. Further, the varying types of properties at issue (river front, land locked, etc) result in a dynamic where the properties are not subject to the same market forces in a uniform manner - the highly unusual market forces over the last 5 years in the high country have not affected all types of property in the same way. As a result, even if all of the parcels could be considered to be part of the same market, the agency cannot justify using such outdated market analyses as the basis for the appraisal analyses simply because they are in the same part of the state – a more refined appraisal and market analysis is necessary to comply with FLPMA and Uniform Appraisal Standards for Federal Land Acquisitions. At a minimum, BLM should have included the 2021 supplement in the Attachments to the ROD, but new appraisals that reflect these dynamics seem warranted if the supplemental report is not comprehensive.

ii. There are unresolved issues with the appraisal undervaluing of some of the federal parcels.

Comments on L-19 and L-20 of the FEIS Appendices document bring forth concerns that federal parcels have been undervalued as they were not considered for their true post-exchange value to Blue Valley Ranch given their assemblage value and post-exchange vehicular access. BLM response to these comments cites “USDI Department of Land Appeals upholds that a third-party who disagrees with a federal appraisal must demonstrate that there was a flaw in appraisal analysis and do so by submitting an appraisal of their own.” It is unfeasible and unreasonable to expect a member of the public to spend money and time on a new assessment of these properties and CWPL argues that it is the responsibility of BLM to ensure the full value of exchanged lands is adequately assessed.

Additionally, in CWPL's 2019 appraisal comments, we asserted that Parcel I is grossly undervalued. In light of the new development that a portion of that parcel is to be sold to a third party, this issue merits the Agency's earnest attention.

- iii. BLM fails to adequately address concerns about negative impacts to adjacent property owners.

"BLM acknowledges that access to this parcel and the Blue River via this parcel may be the reason that individuals purchased property in Blue Valley Metropolitan District. While there may have been a perception that this land would exist in BLM ownership in perpetuity, this parcel is described as being appropriate for disposal in the 2015 RMP." [FEIS Appendices at L-19]. This argument fails to address the fact that other local landowners may have bid on Parcel G if it was for sale. But a land exchange is not a sale; it is not an opportunity extended to any interested party, and it by-passes a competitive market to the exclusive benefit of one individual.

- iv. BVR-9 remains undervalued, robbing Summit County taxpayers of fair compensation for this property.

In supplemental comments submitted to BLM in October 2019, CWPL noted that the land exchange appraisals have undervalued BVR-9¹³. The appraisal of BVR 9 seems to ignore the fact that Summit County purchased this land for \$3184/acre in 2002 (based on work by this same appraiser), and has valued this parcel at \$330,000 (\$2750/acre) in 2017 [See attached comments from October 2019]. The proponent owns an option to purchase the property, for the greater of \$600,000 or appraised value. CWPL's supplemental comments questioned the choice of comparable properties used to determine this value, as they ignored both the option price and the price that Summit County paid for the property in 2002. And, as mentioned above, the land exchange appraisals are now over five years old and do not include recent sales data which would likely support substantially higher values. This issue with BVR-9 alone supports an argument for new appraisals.

CONCLUSION

Based on the concerns voiced in these comments, CWPL still concludes that Alternative 1 – No Action would best serve the public interest. This document leaves many holes in the planning that would be necessary for demonstration that the exchange would be in the

¹³ CWPL submitted these supplemental comments after receipt of information requested in a June 1, 2018 FOIA request for supporting documentation to the DEIS in conjunction with that comment period.

public interest. We have included recommendations regarding releasing information that could help to further support the Agency's position and plans, acquiring permanent protections that could make a stronger case that the proposed action serves the public interest, and enhancing and assuring public access, use, recreation facilities and management.

The Draft Binding Land Exchange Agreement, Record Of Decision, and Notice Of Decision still leave many questions about restrictive access, guarantee of recreation improvements, mitigation of resource loss and protection, and equal monetary value concerns.

Given the foregoing, the Record of Decision for the Blue Valley Ranch Land Exchange Final Environmental Impact Statement violates NEPA and FLPMA and their implementing regulations. The agency should remand the analysis for updates as noted herein and provide for a meaningful opportunity for public review and comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Rickenbaugh', with a stylized, cursive script.

Anne Rickenbaugh

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

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ATTACHMENTS TO FOLLOW

STANDARD DOCUMENT - CONVEYANCE WITH EASE											
NAME OF EXCHANGE	ROUTE	BLUE VALLEY RANCH	BUFFALO HORN	HERMOSA / MITCHELL LAKES	HUSTED MAITLAND	MT. EMMONS / RED LADY	SUTLEY RANCH	VALLE SECO	VILLAGE AT WOLF CREEK	WILLOW CREEK	WILSON PEAK

NOTES

* Old growth, fern, etc.

† The final EA does not specify for parcel B (FEA at 25).

‡ The type of access differs in that the existing federal access provides a remote float and the exchange would provide direct access from a parking area.

§ Limited to listed species for game purposes. Additional species habitat may be present within this exchange. See reference documents for more information.

¶ Wetlands on non-federal parcel are primarily man-made and are drying up, per the Final Environmental Assessment.

|| Non-federal parcel currently has private motorized access but will not have any public summer motorized access post exchange.



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.

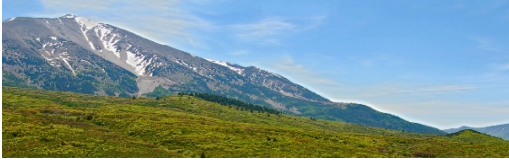
Sincerely,

A handwritten signature in cursive script, appearing to read "Franz Froelicher".

Franz Froelicher

On behalf of The Colorado Wild Public Lands Board of Directors

Website: www.coloradowildpubliclands.org
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COLORADO WILD PUBLIC LANDS

October 10, 2019

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 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 10¹. 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).² 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 404³ 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:

¹ 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.

² See Jacobs at 15 for a full description of other waters of the U. S.

³ 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:

The Colorado Wild Public Lands Board of Directors:
Franz Froelicher, Jean Perry, James Katzenberger, Anne Rickenbaugh,
Stefanie Davis and Hawk Greenway



Colorado Wild Public Lands

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July 31, 2021

Kremmling Field Office,
Bureau of Land Management,
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Kremmling, CO 80549

Via e-mail: kfo_webmail@blm.gov and <https://eplanning.blm.gov/eplanning-ui/project/81162/595/8002361/comment>

Dear BLM Kremmling Field Office,

RE: Proposed Blue Valley Land Exchange FEIS Comments

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

We appreciate the BLM's responses to the public's comments and the additional information in the FEIS. After reviewing the FEIS and supporting information, we are providing our comments below. In this letter we have focused on new information and refer the reader to COWPL's comments on the Draft EIS, dated June 2018, as well. These comments are based also on our conversations with involved groups, users of the area, and members of the public.

I. THE PUBLIC INTEREST IS QUESTIONABLE AND THERE IS NO GOOD REASON FOR THIS LAND EXCHANGE.

See COWPL's comments on the Draft EIS, dated June 2018, for the preamble to this section.

We suggest that as the three alternatives exist currently, Alternative 1–No Action, is the alternative that would best serve the public interest. BLM Parcels G, H and I have high natural values and critical locations in maintaining 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 FEIS proposal. In particular, we commend placing a permanent

easement for the Spring Creek bridge take-out, and the proposed recreation improvements at the confluence area. Should the work on the proposed exchange move forward, we have included recommendations regarding further study of resources, and obtaining permanent assurances and funding for proposed resource protection, public access, use, recreation facilities and management.

The reason for the exchange appears to be that the non-federal party, Blue Valley Ranch (BVR) would like to obtain additional property along the Blue River for purposes of controlling the river, doing instream improvements, creating private fishing opportunities, limiting public access and generally obtaining greater privacy. The contents of the FEIS illustrate that the land exchange as proposed (Other than Alternative 1–No Action) does not meet the stated objectives for the exchange.

The BLM has proposed additional mitigation (increased recreational facilities and different public access options) as mitigation for loss of public access to high quality public lands that have valuable natural resources and recreational values, especially river access and recreation. The amount of mitigation proposed by the BLM (including access easements, recreational facilities, and an attempt to keep part of Parcel 1) indicates that the BLM recognizes the severity of the impacts to the public of losing the riverside Federal lands. COWPL is concerned about the following issues in relation to the proposed mitigation:

- The BLM cites a major reason for the exchange to be to resolve public-private use conflicts. (FEIS ES-1) Yet in attempting to mitigate for the loss to the public, the BLM is creating new opportunities for public-private use conflicts. See, for example, a proposed new access easement on land to be transferred to BVR and the proposal to split Parcel I.
- *The BLM does not provide sufficient guarantee, through presentation of written easements and assurances, or accurate mapping, design and planning documents, that these promises for new recreational opportunities will be realized.
- There is little information presented that illustrates that the public is benefitting from the parcels that are proposed to be transferred from BVR to the BLM.
- Instead, the BLM proposes that the way to mitigate for the loss of the proposed BLM exchange parcels, is to provide easements through BVR land and to develop recreation facilities that will need to be managed. Another goal for the exchange was to reduce BLM management requirements. This approach will increase management requirements.

Given the amount of use the area is currently experiencing (COWPL site visit July 26, 2021 and anecdotal evidence) it makes sense to improve put-ins/take-outs, to provide parking and possibly toilets. COWPL suggests that these improvements should be considered and funded separately from the land exchange as they do not compensate for the types of experiences and natural resources that will be lost to the public in the exchange.

II. THE PROPOSED ALTERNATIVE 3 DOES NOT WORK.

The BLM has proposed retaining a portion of Parcel I for continued public access and use (FEIS-20). The proposed configuration does not adequately meet the public need, and in fact appears to propose a corner-to-corner land adjacency which is not considered to legally provide access in Colorado. The BLM recognizes the value of Parcel I to the public, but the proposed split further fragments public and private land holdings and does not work to provide access.

The FEIS does not explain why retaining 76 acres of Parcel I in public ownership, requires the removal of all the following: BVR parcels 3 and 4, access at the pump house and all the recreation improvements. (FEIS-21)

III. INFORMATION IMPORTANT TO A DETERMINATION OF THE PUBLIC INTEREST IS UNAVAILABLE AND/OR OUTDATED.

Though the FEIS provides much valuable information on the parcels proposed for exchange, and additions have been made since the DEIS was published, important information still 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.

- The maps and graphics provided are hard to read. For the overall parcel maps, the scale is too small to see sufficient detail. Larger scale maps of each of the exchange parcels would be beneficial. The design drawings are not adequately detailed or large enough to see if the proposals really work, for example, trail gradients.
- Public comments, appraisals and other previous material e.g., scoping documents, are not on the project website at <https://eplanning.blm.gov/eplanning-ui/project/81162/570>
- Supporting materials for the FEIS are outdated. Understandably, the Environmental Impact Study process, is a long one. However, especially in these rapidly changing times, it is imperative that supporting information is current. There has been significant population growth and recreation user growth in the last five years, and

even greater influx of residents and recreationists initiated by the Covid-19 pandemic in 2020. For example, <https://www.summitdaily.com/news/mountain-migration-report-shows-disparities-between-newcomers-and-residents-of-mountain-towns/>

https://coskitowns.com/wp-content/uploads/2021/06/Mtn_Migration_Report_v2FINAL.pdf

Examples of some of the outdated material cited in the EIS include: Recreation Demand Analysis dated November 2013, and Appraisal Reports dated June, 2017.

- COWPL notes that new wildlife information has been included in the FEIS.
- In Appendix L: Response to Comments, the agency states “To ensure that the Recreation Design Features would be implemented, the closing of the land exchange would be conditioned on certain measures specific to each ... feature being in place” [FEIS L-6]. The text then includes reference to BVR providing a bond to ensure this, but provides no further details.
- “The fishing easement and the pedestrian-only access easement may be subject to the occasional temporary interruption of use for public safety, natural resource protection and ranch management activities – such as river improvements, irrigation structure repair, and road maintenance.” [FEIS at L-28] For any closures, specified activities and times of the year are required in the easement so as to prevent the proponent from using them as a means to further restrict public access.
- Easements for the put in and rest stop should be co-held by both a government entity and a not for profit, and should be managed by the government entity to ensure continuity of the easement.
- Descriptions of the proposed recreation improvements and the related future ownership, easements, funding and management have been further described in the FEIS. However, additional information such as draft easements, more detailed designs and estimated design, construction and management costs, are needed to provide the public assurance of the commitments.
- Valuable natural resources have been identified on 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.
- The FEIS cover page lists a cost of \$757,000. It is not clear if this is the cost to the BLM or to the non-Federal proponent. Presumably it is a cost to date, and further costs will be incurred. A more detailed cost breakdown is needed, e.g., 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, DEIS and EIS. Include projected future costs.

- In early July 2021, Colorado Wild Public Lands submitted FOIA requests for further information (some of which is listed herein) that have not yet been received at this time. Not having the detailed qualitative information from the requested documents has hampered our ability to thoroughly analyze the impacts of the proposed exchange.
- 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 an FEIS appendix. (FEIS-15)
- “Additionally, there would be a period following the close of the proposed land exchange where the proposed Recreation Design Features would not be constructed yet. During this window of time, certain users may perceive a greater loss in recreation opportunities; however, it is important to note that following completion of the exchange, public access for casual use on parcels with proposed Recreation Design Features is allowed.” [FEIS at 46] There should be a provision in the instruments of assurances (easements, bonds, etc.) that includes a time certain for construction of the RDFs so that the public knows how long the limbo will last and when they can expect to start using the amenities being offered as mitigation for the loss of their current recreation opportunities.

IV. CONSERVATION EASEMENTS ARE NECESSARY TO PROTECT IMPORTANT RESOURCES.

Per the Blue Valley Ranch website as viewed on July 30, 2021:

Q. The ranch may be committed to conservation now, but what happens to this land if the ranch is sold? How do we know the land won't be developed then? How about putting a conservation easement on the ranch?

A. A conservation easement is far beyond the scope of this land exchange. It is not what is being considered here. The only issue being considered is the exchange of land between a private ranch and the public. (<https://bluevalleyranch.com/land-exchange/overview/>)

The above comment on the Blue Valley Ranch website concerns COWPL. To ensure protection of resources, COWPL recommends placing conservation easements prior to

finalizing the exchange and to use the post conservation easement land values for the exchange appraisals.

We commented extensively in June 2018 that important resources will be conveyed into private ownership without any permanent resource protections and may be damaged or lost. The following is an enumeration of those resources and why the BLM response to our comments does not afford the necessary protections.

A. VEGETATION

The exchange would result in a net loss of 7 acres of *Penstemon Harringtonii* habitat for lands managed by the BLM.” [FEIS AT A-22]; this plant has special classification from both the BLM and the Forest Service as a sensitive species. While the agency’s assertion that the uses that occur on the lands in the exchange will likely not change very much, 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 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 FEIS does not include discussion of the cumulative loss of *Penstemon* habitat over multiple agency actions.

B. CRITICAL ELK HABITAT

Under the proposed exchange, 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. [DEIS at 3-86]. The imposition of conservation easements would prohibit future development in this habitat.

C. WETLANDS, AQUATIC AND RIPARIAN RESOURCES

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.

43 CFR 2200.0-6(i).

RIPARIAN AREAS AND WETLANDS ARE THE MOST PRODUCTIVE ACRES IN ANY WESTERN LANDSCAPE.

They often produce several times the amount of forage of surrounding uplands, and include most of the plant species diversity on the landscape, despite occupying only 1-4% of the total land area. This is due, of course, to the presence of water, the most limiting resource in most Western landscapes.

Wetlands and riparian areas also provide important ecosystem services to local communities by slowing water runoff and reducing erosion, filtering and cleaning water runoff before it enters streams, lakes or ponds, and providing habitat and important corridors for wildlife and fish.

(<https://bluevalleyranch.com/explore/riparian-wetlands>)

As Blue Valley Ranch states above, riparian areas and wetlands are critical ecosystems. In DEIS comments COWPL noted the net loss of these resources resulting from the proposed exchange:

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)

none of which would continue to benefit from federal oversight that currently protects them and maintains important habitat, water quality and public land health standards.

The introduction to FEIS, Section 3. K WETLANDS AND RIPARIAN HABITATS describes the federal mandate through Executive Order 11990 and the Clean Water Act to retain wetlands and riparian habitats in federal ownership. [FEIS 110-111] It pays particular attention to Executive Order 11990:

When federally owned wetlands or portions of wetlands are proposed for disposal to non-federal public or private parties, Executive Order 11990 directs federal agencies to (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. [FEIS at 110]

and to direction from the 2015 KFO RMP:

“The RMP acknowledges the importance of wetlands and riparian habitats ... In terms of fisheries, perennial water sources (streams, rivers, lakes, ponds, springs, seeps, wetlands, wet meadows, bogs, and fens) and riparian areas are identified as priority habitats that should be protected.” [FEIS at 111]

“As specified in the 2015 RMP, livestock grazing management would be focused on protecting wetlands and riparian values with the objective of achieving Proper Functioning Condition and attainment of Public Land Health Standard 2. Specific management actions are identified in the 2015 RMP to reduce or limit grazing impacts.” [FEIS at 129]

Under the proposed action, 78 acres of wetlands would no longer be subject to these controls.

While describing the agency’s legal and regulatory obligation to protect these critical natural resources, the FEIS includes no details or guarantees as to how such protection will occur post land exchange.² BLM continues to rely on the continuation of the proponent’s existing uses, the proponent’s current land stewardship and federal and local land use regulations [FEIS at l-15] to mitigate for the public loss of these protected resources, leaving 78 acres of wetlands no longer subject to federal tools for protection.

Reliance on the continuation of existing uses and an individual landowner’s stewardship practices is no substitute for federal oversight and land management. Development of private property is not an “unforeseen use”; it is an eventual one, even if it is many years in the future. Private stewardship is undertaken at will, subject to an individual's vision at a point in time; that vision may change and subsequent owners may not share it. Conservation Easements are essential to ensure management practices that prioritize and protect natural resources into the future.

The FEIS relies on Section 404 permits and local land use regulations instead of Conservation Easements for post-exchange wetlands protections. These regulations are triggered only through a permit application process. Federal and local wetland regulations do not apply if a landowner is not seeking a permit. Given the large acreage of many properties in Colorado, it is easy and common to start up the backhoe and start digging. Even if current and future landowners do seek permits, Section 404 “nationwide” permits are not difficult to get for small projects, and they are not subject to any NEPA review or public comment. It is reasonable to assume at least incremental reductions in wetlands on private property over time.

² The FEIS does reference a deed restriction prohibiting residential development that would be imposed on BLM-C if and when BVR conveys it to Sheephorn ranch; but there is no other detail about this, not even regarding its purpose. The deed restriction will not apply to the BLM’s conveyance of parcel C to BVR.

The federal government can levy charges and fines against violators, but they are unlikely to do so for any but the most egregious violations; and BVR's man-made wetlands [FEIS at 118] are subject to lesser standards and regulation, making them unsuitable mitigation for the loss of wetlands resulting from the proposed action. Federal and some, but not all local land use codes require mitigation for wetland destruction; but once the natural state has been altered, it takes time for it to return to its former glory, assuming the conditions that favored it to begin with remain unaltered.

D. FENS

Under the Proposed Action, the land exchange would result in a net loss of fens under BLM management; the number varies from .03 acres under Alternative 2 to .08 acres under Alternative 3. Fens are unique and unusual resources that take up to 10,000 years to form [FEIS at L-15]. The FEIS offers no protections for the loss of fens the land exchange would convey into private ownership.

The Agency has allowed the fens to become degraded through the leasee's (possibly the Proponent's) grazing practices. The BLM has a responsibility to require improvement of the fens rather than ceding degraded fen resources into private hands thereby removing future federal oversight that would require improvement of those resources. In discussion regarding the fens on BLM C, BLM notes:

“Grazing impacts are evident” [FEIS at 113]; and
“USACE classifies fens as “Resource Category 1” and that destruction and mitigation of fens is not allowed.” [FEIS at 121]

The FEIS refers to a future deed restriction on BLM-C [FEIS at 15] which, might be to protect the fens; the deed restriction would apply to BVR's conveyance of a portion of BLM C to the Sheephorn Ranch, but not to the conveyance of Parcel C to BVR in the land exchange. If the agency is relying on this as future protection for the fens, then the deed restriction should apply to any private ownership and from the outset of conveyance into private hands; there is no guarantee that the transaction between BVR and the third party will occur. Moreover, despite COWPL requests to review the agreements between BVR and third-party beneficiaries, BLM has not yet released them. Presumably, the agreement between BVR and Sheephorn would contain details of this deed restriction. The FEIS does not describe any mechanism to ensure the placement and enforcement of a deed

restriction³. Without being able to review the deed restriction, the public cannot evaluate whether the absolute protection afforded to the fens by the USACE classification will occur.

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

E. PALEONTOLOGICAL AND CULTURAL RESOURCES

The FEIS analyses paleontological resources in Chapter 3 (FEIS at 61). 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).

Portions of BLM-G, BLM-H, BLM-K and BLM-I, overlap the Niobrara Formation and are Class 5 areas. PFYC guidance recommends that Class 5 areas be assessed prior to land tenure adjustments. The FEIS states that BLM knowledge of the area and museum record searches do not support the likelihood of subsurface paleontological resources being present. (FEIS-65). However, no field studies were conducted for the land exchange.

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.

The FEIS locates the section on cultural resources in Appendix G as a result of “no or negligible impacts” (FEIS-11). Yet, in the DEIS, cultural resources were identified as being of importance on Parcels G, H, I and K. Also, COWPL has been informed that there is a

³ COWPL has submitted FOIA requests twice for the agreements between the proponent and the 3rd party beneficiaries of BLM-A, B, C and J and the Agency has not released them to us.

marker on Parcel H for archaeological resources. Lithic scatter can be seen on several of the parcels.

There have been many studies of the archaeological value of the public (BLM) lands included in this proposed exchange, see partial list below. At least four different reports (from 2004 onwards) were included in the FOIA information that COWPL received in 2019.

- 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

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 bearing the important cultural resources documented in the reports, will not be in the public interest.

V. THE CONVEYANCE OF BLM J IS NOT IN ACCORDANCE WITH FLPMA AND THE LAND EXCHANGE IS SETTING THE STAGE FOR SIMILAR VIOLATIONS IN THE FUTURE.

Because BLM acquired Parcel J through a land exchange, the parcel cannot be conveyed out of public ownership. 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)

Not only is BLM J's conveyance contrary to this section of FLPMA, the FEIS has not demonstrated that its disposition is allowed through exception, or, if it were, why such disposition is in the public interest.

Parcel J has qualities that are of public value, including:

- Sage Grouse PHMA with "documented occupancy" [FEIS at 82],
- almost 60 acres of wetlands [FEIS at 115],
- 5.375 cfs of water rights, [FEIS at 102] and
- 1383 feet of Colorado River Front at the confluence of Reeder Creek [DEIS at 3-89], that is a well-used fishing spot.
- The sage grouse habitat, wetlands, river frontage and location within the Colorado River SRMA are also identified in the 2015 RMP as reasons for retention.

Additionally, the public is losing water rights that the FEIS says the BLM does not have the resources to manage;

"Since the parcel was acquired, the lack of BLM resources to manage the irrigated section of the parcel ... make it a costly parcel to manage." [FEIS at 4]

However, in discussion of the water rights on the BVR parcels the BLM will receive, the FEIS describes multiple ways the BLM plans to put them to good use:

"BLM would continue to use ... water rights to irrigated native vegetation ... Instead of using irrigation to exclusively support livestock grazing, the BLM would implement irrigation to support livestock grazing and broader objectives, including improving big game habitat and riparian habitat. BLM may also work cooperatively with grazing permittees and other water right owners ...to maximize wildlife and riparian benefits by closely coordinating the timing and location of irrigation practices." [FEIS at 104]

The FEIS does not explain why the water rights on Parcel J could not be put to the same uses. Even if BLM does not want to manage the water rights on the Parcel, it could work with the Colorado Water Trust to use the water rights on now public parcel J for in-stream flow.

The conveyance of J underscores the BLM's haphazard approach to what the public receives in land exchanges. According to the FEIS:

"BVR has no interest in obtaining these parcels, but in the interest of agreeing on an exchange that best met the Purpose and Need of both parties, BVR agreed to include them in the exchange. Both BLM-J and BLM-K are difficult to manage as they are

surrounded by non-federal lands owned by Skylark Ranch and Blue Valley Acres #2 subdivision, respectively. Upon successful completion of the exchange, BLM-J and BLM-K would be conveyed by BVR to their adjacent landowners (Skylark Ranch and Blue Valley Metropolitan District).” [FEIS at F-3]

BLM J was acquired through a previous land exchange with the proponent of this one! In 1999 the BLM acquired J from Galloway, Inc., who, according to this FEIS, did not want it, and in 2021, the agency is going to give it back to Galloway, Inc, who still does not want it.

The agency should be more intentional about what it receives in these land exchanges. If the Parcel is of little importance to the agency, if it is difficult to manage and surrounded by private land, they should not have accepted it in the first place. But they did, and FLPMA says that now that J is public land “it shall remain public lands”.

A. OTHER PARCELS THAT ARE OF LITTLE VALUE.

At least Parcel J has public values on it. There are other parcels in this exchange that appear to have no public or private values, and the FEIS has not addressed why the agency is willing to take them. The BVR 7 easement from Trough Road to public lands near inspiration point provides access to nowhere; according to maps, the tracks accessed via this easement dead end and access steep topography that limits “off piste” exploration. It is unlikely that people will use this “amenity”, unless the agency has plans they have not discussed with the public to develop new trails in the area. The appraisal assigned a value of “Zero” to this interest. [non-fed appraisal at 3]

BVR 5 is a two-acre parcel that does not even merit a dot on the vicinity map; the appraisal assigned a value of \$10,000 [non-federal appraisal at 3] to this land with no development right, no water, no grazing potential and an old gravel pit [FEIS at 92]. There is no public value to this land, as there is already good vehicular access to adjacent BLM lands; perhaps the only private value might be the remnants of an already worked gravel deposit. Acquisition of these parcels in conjunction with the trading of BLM J leave the public wondering whether the agency is really advocating for public interest or just losing at a Monopoly game.

VI. RECREATION AND THE BLUE RIVER.

A. OVERVIEW

COWPL agrees with the quote from Blue Valley Ranch’s website that:

RIVERS AND STREAMS ARE OFTEN CHARACTERIZED AS THE LIFEBLOOD OF THE SURROUNDING LANDSCAPE.

The power of flowing water shapes the landscape and creates the watersheds that define community and regional identities. Water quality and quantity in western rivers supports fish and wildlife, agriculture and industry, recreation and sport.
(<https://bluevalleyranch.com/explore/the-river/>)

This land exchange is clearly about Blue Valley Ranch obtaining further control over the Blue River. Per the post exchange overview map (extract below to right), the extent of blue shaded area for Blue Valley Ranch, begins at the south end of BVR-10 (river frontage still owned by BVR post exchange) and continues to just before the confluence take-out. There are a few other privately owned properties along the way, but no public lands.



Pre Exchange Land Ownership



Post Exchange Land Ownership

LEGEND: Blue-Blue Valley Ranch, White-Other Private, Yellow - BLM

Source: <https://bluevalleyranch.com/land-exchange/overview>

In comparison, the pre-exchange map (extract above to left) shows BLM parcels G, H and I creating public use areas interspersed among the privately owned lands along and on the

river. As described in the FEIS, these parcels provide take-out opportunities, fishing access and great fishing holes, camping and wildlife viewing. A fisherman from Denver, who COWPL met on July 26 at the river on Parcel I, described a best-ever morning of landing a 24-inch trout, seeing a bear, bald eagles and other wildlife. In addition, the parcels have cultural resources including lithic scatter and a historic marker on H (anecdotal) that provide further recreation for people who enjoy discovering evidence of cultural history.

The FEIS Alternative 2 proposes a new stop at the Pump Station Rest Stop and improvements at the Spring Creek Take-Out. Both these proposed pull outs would be on private land, and therefore would not stop BVR from obtaining and controlling a significantly longer stretch of uninterrupted river than they currently hold. BVR has already constructed instream improvements for fish that limit water depth for rafting. It is possible that such instream construction could occur on the newly acquired parcels, further limiting the public's opportunity to float the river.

The FEIS states that there would be easements on these locations and camping would not be allowed. Since the easements are not included in the FEIS documents, it is unknown what further restrictions to the public might occur.

The new FEIS Alternative 3 proposes keeping 76 acres of Parcel I in public ownership, yet the FEIS map, Figure 2, Alternative 3, fails to show that public access through I is viable. It appears there is a corner-to-corner connection. Corner crossing is not allowed in Colorado. Strangely, Alternative 3 is proposed with the loss of all recreation improvements and easements that are proposed in Alternative 2.

B. PARCELS I HAS IRREPLACEABLE QUALITIES.

Parcel I is a an easily accessible public parcel. It is accessed directly off Trough Road, has a parking area, trailhead sign, easy trail to the river and excellent river frontage (see also discussion in previous section). The proposed exchange parcels near Green Mountain do not offer the same level of accessibility and quality of river frontage as does Parcel I.



Parcel I aerial shows partial boundaries, road access. from Trough Road and river



Sign and trail to river from parking area on Parcel I.



View from Parcel I over the cliffs to the river.



A fisherman using the public area. COWPL saw fishermen downstream on the river as well.

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).

...virtually all current users of BLM I are anglers. (FEIS at 41)

Per the above, Parcel I provides outstanding fishing opportunities that cannot be replicated.

C. THE PROPOSED MITIGATION IS INADEQUATE.

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. A main point was that by

removing these lands from public ownership, the experience of the float along the river would be significantly changed. As mitigation, the FEIS has proposed the pumphouse stop that would provide an intermediate pull-off, and a take-out at the Spring Creek bridge. Neither of these provides the range of exploring opportunities or the extended land connections provided by Parcels G, H and I.

Importantly, the FEIS does not provide sufficient assurance that these stops that are on BVR owned land, will provide year-round unencumbered public access. The FEIS should include draft easement documents for the public to review.

D. 2015 RESOURCE MANAGEMENT PLAN

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, and J retention areas, they were removed from that status due to a dating rule.**

E. THE TERRAIN NEAR GREEN MOUNTAIN IS DIFFICULT AND THE ACCESS PROPOSALS SEEM UNREALISTIC.

The FEIS proposes a new access for fishing west of BVR 10. Per the maps provided, it appears that BVR will convey Parcel 10 to the BLM with the exception of river frontage, thereby making it necessary to grant a fishing access easement to the public. A more suitable exchange would simply include conveying all of BVR parcel 10 to the public.

... additional public access for fishing in the lower Green Mountain Canyon west of BVR-10 would be granted. BVR would grant a fishing easement in perpetuity for public use of the 0.18-mile segment of river on BVR property that lies between NFS

lands to the south and BLM lands to the north. This fishing easement would result in a total of 1.65 miles of contiguous bank and wade fishing access on the Blue River. Secondly, to allow anglers to more easily reach the fishing easement, BVR would also grant a perpetual pedestrian-only access easement following the route of the existing BVR ranch road. (FEIS at 16)

The FEIS describes access to an additional 1.65 miles of bank and wade fishing. However, the character of that stretch of river is steep, rocky and often extremely difficult to access due to the topography. There are multiple anecdotes of how difficult access into the canyon is and how difficult and dangerous the fishing can be with descriptors such as “adult” and “extreme” from people who fish it.

BVR proposes granting easements to the public to access the river, yet has already disclosed a number of restrictions and potential periods of unavailability. This makes access uncertain at best.

The fishing easement and the pedestrian-only access easement may be subject to the occasional temporary interruption of use for public safety, natural resource protection, and ranch management activities—such as river improvements, irrigation structure repair, and road maintenance. Because the easements would run through active ranch land, cattle grazing and irrigation activities would be proximate; therefore, the easements would not allow camping, fires, firearms or animals, and would only be used for pedestrian access... (FEIS at 16,17)

This proposal relies on initially driving a road on BLM property, labelled “existing access road” on FEIS Figure 5. When COWPL was on site, it appeared that the road was gated and therefore the road was not accessible. COWPL requests clarification on public access on that road. If the road is available and a parking lot is constructed on BLM land, the public would still need to walk about ¼ mile on the newly acquired BLM land before reaching Forest Service land for another possible trail connection, described below.

Finally, this proposed river access relies on the Forest Service to build a trail on their property to access the river. The Forest Service manages their land near Green Mountain for deer and elk winter range. Opening the land to increased public use would create additional impacts to natural resources. Discussion of potential impacts to, and management of, the national forest land is not included in the FEIS. That is proposed to be addressed only in a future NEPA document to analyze the trail feasibility. The additional work will need funding and it is unknown at this time whether the outcome will allow for a trail in that location.

The FEIS identifies limits to people using a proposed trail on Forest Service land:

“Therefore, CPW is requesting that bighorn sheep use and angler pressure along the trail be monitored. If recreational pressure from anglers (accounting for the incidence of accompanying dogs) rises to a level that begins to have measurable or meaningful impacts on ewes and lambs on Green Mountain, then CPW may request from the BLM and Forest Service a seasonal closure to minimize impacts to bighorn sheep during the sensitive lambing season. While lambing generally occurs from June 1 through June 30, CPW may request longer closure periods if warranted.”
[FEIS at 84]

Canada Lynx is a threatened and endangered species in that area too.

The private parcels near Green Mountain (BVR-2, BVR-9 and BVR-10) are within the Mahan Lynx Analysis Unit (LAU). LAU’s have habitat characteristics that could potentially support Canada lynx. [FEIS at 79]

While a new trail to be constructed on NFS lands in the Mahan Lynx Analysis Unit is proposed, the land exchange proposal does not authorize the actual construction of the trail at this time. However, this assessment does consider potential construction of this trail as a potential interrelated and interdependent action. The potential use of this trail for angler access to the Blue River is likely to be in the summer, as the access road to the trailhead would not be plowed or open in the winter months. Therefore, the proposed trail would not meet the definition of a new Snow Compacted Route. Hence, there would be slight to discountable impacts to suitable lynx habitats within the Mahan LAU. [FEIS at 80]

Per the above, it is stated that the proposed river access would only be in the summer months and not year-round. Thus, it is clear that creation and use of the trail will be limited by the LAU, and it’s possible that future NEPA studies could determine the trail infeasible.



Views of the Blue River from the public parking and access area downstream of Green Mountain Reservoir.

The 1.65 miles of river shoreline that is proposed to be accessed through the new easement and BLM road has always been in public ownership. It is accessible by raft from below the Green Reservoir where there is a parking area and a steep put-in. It is also accessible by foot similar to the proposed new access, via a steeply sloped river bank with a minimal and rocky shoreline, where accessibility is also dependent on water depth and flow.

F. FUNDING OF RECREATION FEATURE DESIGN, CONSTRUCTION AND MANAGEMENT.

To ensure that the Recreation Design Features would be implemented, the construction of the Recreation Design Features would be part of a binding Exchange Agreement, with funding for the construction of the proposed improvements provided by BVR and addressed in a bond. It is estimated that approximately \$1.2 to \$1.9 million would be necessary to fund construction and future management of these features. (FEIS at 21)

COWPL supports the direction the BLM is suggesting in “Management of Design Features” (FEIS at 21), should the exchange proceed. Given ongoing rising costs of construction and management, we recommend that a detailed cost estimate is done for the years of design, construction and future years of management; used for the bond, and provided to the public for review.

VII. THE FEIS OBSCURES THE EQUAL VALUE ASSESSMENT.

A. NEW APPRAISALS ARE NEEDED.

The appraisals are dated November 2017, almost 4 years old. No open market real estate transaction would rely on appraisals this old. These would be dated in any real estate market, but the last 18 months has been a particularly robust market in resort communities around the west. People are flocking to these smaller communities to escape the cities and have greater access to outdoor recreation. This dynamic is making desirable properties, such as BLM parcels G, H and I with riverfront access more expensive due to a limited supply of access to such recreational amenities. New appraisals should be done that reflect these dynamics.

B. IN THE FEIS, THE CONFIGURATION OF THE PROPOSED ALTERNATIVE NEEDS TO BE CONSISTENT WITH THE APPRAISAL VALUES AND SHOULD NOT BE MODIFIED IN THE FINAL DECISION.

The FEIS has offered a third alternative, which was not available for consideration in the 2018 DEIS. This alternative would change the parcel configuration of the exchange and new appraisals should support the valuation of the elements presented in this new alternative.

Under FEIS Alternative 3, a part of BLM I would remain in public ownership and the proponent would withdraw some of the BVR Parcels and the RDFs proposed in the Action Alternative (Alt 2) presented in the Draft EIS.

“Alternative 3 includes a reconfigured boundary for BLM-I that would retain public access to the riverfront and associated walk-in fishing opportunities on this parcel. To equalize the land exchange without this portion of BLM-I, BVR-3 and BVR-4 are not included in Alternative 3. Additionally, Alternative 3 does not include donations from BVR of land or Recreation Design Features included in the Proposed Action.”
[FEIS at ES-2]

The inclusion of this alternative at this late stage in the NEPA process presents two issues; it makes public determination of equal value difficult to assess because it becomes necessary to consider two entirely different parcel configurations and packages of recreational amenities, and Alternative 3 emphasizes the significant value of BLM-I which

COWPL asserted in supplemental comments was undervalued in the appraisals released to us in 2019.⁴

The public commented on a configuration of 9 BLM parcels, 9 private parcels, and an assortment of proposed (but not vetted or budgeted) easements and amenities to facilitate recreational opportunities. Because the appraisals were completed prior to the release of the DEIS, we must assume the Proposed Action was based on the equal value supported by those documents.

Adding a third alternative at this stage renders the NEPA process inaccessible to the public. It makes it extremely difficult for the public to understand what they are evaluating, by making it unclear what the agency proposes to do in the future. It also makes it difficult to determine whether the various alternatives are of equal value, especially with only one set of appraisals. If the agency wants the alternatives to evolve, the appraisals, which drive the land exchange configuration and the public interest determination, should evolve with them.

Another aspect of the new Alternative 3 is that it seems to validate the concern that COWPL raised in supplemental comments that BLM-I was undervalued in the appraisals. [COWPL Oct '19 at 4-5] The alternative evaluated in that set of comments was FEIS Alternative 2. Under the new Alternative 3, the value of including part of BLM-I is substantial enough to warrant the removal of 3 BVR parcels (3,4 and the “chevron donation”)⁵ and all of the proposed RDF’s and accompanying easements, which are worth up to \$1.9 million [FEIS at 21].⁶ Perhaps withdrawal of a significant portion of the public benefits would be necessary to meet the equal value of this new alternative, but the lack of new appraisals makes assessment difficult.

C. NEGATIVE IMPACTS ON ADJACENT PROPERTY OWNERS.

The agency has responded to concerns regarding the exchange’s negative impact on private properties adjacent to BLM lands in the exchange with “Buyer beware”

“BLM acknowledges that access to this parcel and the Blue River via this parcel may be the reason that individuals purchased property in Blue Valley Metropolitan

⁴ The BLM has insisted in this FEIS that the appraisals have not been released to the public and that it will do so with its Record of Decision [FEIS at L-18]; but COWPL has requested that the appraisals, already released to this organization in 2019 should be available to the public through the e-planning portal containing the FEIS and supporting documentation. The appraisals are dated November, 2017, prior to the release of the DEIS.

⁵ The 2017 appraisal did not assign a value to the “chevron parcel”. [Non-federal appraisal at 3].

⁶ The 2017 appraisal valued BLM-I in its 397-acre entirety at \$1.49 million [Federal Appraisal at 3].

District. While there may have been a perception that this land would exist in BLM ownership in perpetuity, this parcel is described as being appropriate for disposal in the 2015 RMP.” [FEIS at 56]

Precisely because of this perception of public lands as being public, this is an unreasonable burden. BLM decision-making does not come with the same noticing requirements as local land use decision making; the agency is not required to notify adjacent property owners that it is considering decisions which could have impact on their lands. While the agency is required to notice the public of exercises such as Resource Management Planning, the requirement is much more general and overarching, not to adjacent landowners directly. In addition, if a homeowner bought their property prior to 2015, the public parcel (G) adjacent to it most likely was not identified for disposal in a resource management plan.

To expect an individual landowner to understand that in order to protect the value of their property they have to engage in the very time and effort intensive process of resource management planning is not reasonable. It would be one thing for BLM to say that they had noticed these affected landowners, that adjacent BLM lands were being considered for disposal under that 2015 process; but this reliance on the Buyer beware argument for something so complex and inaccessible is unrealistic and unfair.

The FEIS “Response to Comments” in Appendix L included numerous comments from neighbors saying they bought their property because of the river access from Parcel G. One of the Blue Valley Acres people we spoke to said he would have bid on Parcel G if he had known it was for sale; but a land exchange is not a sale and it is not an opportunity extended to any interested party; it by-passes a competitive market to the exclusive benefit of one individual.

COWPL reiterates that conveying BLM-G out of public ownership adversely impacts adjacent property owners and a BLM decision to undertake the land exchange would be a government “taking”. The land exchange would not only take the current enjoyment of access to the river through Parcel G from these adjacent landowners, it could have a negative impact on their future property values, as one of the appeals of the subdivision is access to the Blue River on BLM-G. Moreover, this land exchange is not a regulatory action, it is a discretionary one, and these owners had no role in deciding whether the agency should exercise this discretion.

D. BVR 9

In supplemental comments submitted to BLM in October 2019, COWPL noted that the land exchange appraisals have undervalued BVR 9⁷. That parcel is actually owned by Summit County and the proponent owns an option to purchase the property, for an amount dependent upon appraised value. COWPL's supplemental comments questioned the choice of comparable properties used to determine this value as they ignored both the option price and the price that Summit County paid for the property in 2002. And, as mentioned above, the land exchange appraisals are now four years old and do not include recent sales data which would likely support substantially higher values. This issue with BVR 9 alone supports an argument for new appraisals.

E. MINERALS

As COWPL noted in its June 2018 comments on the DEIS, the Blue Valley Land Exchange Feasibility analysis noted reserved mineral rights to 3rd parties on BVR-1 and BVR-3, but there was no discussion of these rights in the DEIS; the FEIS has not resolved this concern. At a minimum, both drafts of the EIS should note that the public would receive a split mineral estate on some of the parcels received in the exchange and the split estate does allow for the possibility of future disruption on those parcels.

The FEIS notes that a 2003 report recommended retaining the mineral rights on BLM-K "until the potential resource can be tested". [FEIS at 16] The document does not discuss whether this issue has been addressed, nor does it indicate that the mineral rights on BLM-K will be retained per that report's recommendation. The FEIS does refer to a 2017 AVSO valuation report, but does not say whether it assessed the mineral potential on K.⁸ BLM G, H, I and J have significant "Saleable Minerals" on them – several million cubic yards of gravel deposits due to their locations in the river bottoms. [FEIS G-23,24] The 2017 AVSO report dismissed these resources saying it "unlikely that these tracts would be developed under current market conditions." [FEIS at G-26] However, the supporting documentation for the FEIS which discusses things affecting these market conditions such as traffic and socio-economic data, both indicators of current and future construction needs, is dated; it is likely not relevant to the current market. Future market conditions might encourage the development of these resources.

⁷ CWPL submitted these supplemental comments after receipt of information requested in a June 1, 2018 FOIA request for supporting documentation to the DEIS in conjunction with that comment period.

⁸ The AVSO report has not been made available to the public; CWPL has submitted a FOIA request for it, but that request has not yet been honored.

F. NEPA VIOLATION – NO APPRAISALS ON THIS WEBSITE.

The BLM did not release the appraisals in time for COWPL and the public at large to include comments on them during the DEIS comment period in 2018; but they did release the documents to us in 2020. Despite this, BLM has not made the appraisals available to the public for comment during this FEIS comment period; the appraisals have been released, and should be available to anyone. COWPL posted these documents on our website on July 6, 2021 - 4 days after the opening of this comment period.

COWPL asserts that the appraisals are a critical piece of information for an informed NEPA evaluation of any land exchange proposal. The agency maintains that:

“The valuation process is a separate administrative process that is conducted concurrently with the NEPA process.” [FEIS at C-1]

However, because the valuation is not only conducted concurrently with (or, in this case, prior to) the NEPA process, but also determines the proposal to be evaluated under the NEPA process, appraisals should be available to the public to document that they support NEPA’s public interest requirement. It makes no sense to apply this late release standard if the appraisals are completed prior to release of the NEPA documents.

G. ADDITIONAL PARCELS ACQUIRED THEN TRANSFERRED TO OTHER OWNERSHIP.

The FEIS does not disclose agreements relating to ensuing private to private land transfers between BVR and Sheephorn Ranch, Skylark Ranch and Blue Valley Acres. Currently, this information is either missing or unclear in the DEIS. Because BVR is presented as the beneficiary of the land exchange and the other parties appear to contribute nothing to the public side, the public has a right to know the nature of these agreements and whether there is any private financial gain from the conveyance of public assets.

VIII. THE FEIS DOES NOT ADDRESS CUMULATIVE EFFECTS FULLY.

The CEQ says:

“Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” [40 CFR ~ 1508.7].

The FEIS states:

“To be a cumulative effect, the impacts from an action must overlap in space and time with the direct and indirect effects of the action.” [FEIS at 131]

but does not cite the guidance for this assertion. Regardless, the FEIS standard is at odds with the CEQ guidance, allowing the agency to limit their temporal and jurisdictional scope to this land exchange at this agency and this field office. Other CEQ guidance tells the agencies to avoid this practice:

“Without a definitive threshold, the NEPA practitioner should compare the cumulative effects of multiple actions with appropriate national, regional, state, or community goals to determine whether the total effect is significant. These thresholds and desired conditions can best be defined by the cooperative efforts of agency officials, project proponents, environmental analysts, nongovernmental organizations, and the public through the NEPA process. Ultimately, cumulative effects analysis under NEPA should be incorporated into the agency’s overall environmental planning and the regional planning”.⁹

Environmental effects from this and past actions should document a net gain or loss of environmental resources such as wetland and riparian areas, public river frontage and aquatic acreage, sensitive species habitat, and, because it affects the human environment, a characterization of the types of public access and recreational assets in connection with “this and other reasonably foreseeable actions regardless of what other agency or person undertakes such action”.

The Final EIS limited the scope of the Cumulative Effects analysis to a list of other land exchanges undertaken by the KFO. It did not analyze or even mention the environmental effects of those exchanges in the Cumulative Effects section¹⁰; nor did it consider the environmental effects of this action in concert with other recent actions undertaken outside of the field office. Because:

“Repeated actions may cause effects to build up through simple addition ... The most effective cumulative effects analysis focus[es] on what is needed to ensure long-term productivity or sustainability of the resource”¹¹; and

⁹ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act*. p.7

¹⁰ The DEIS did broadly discuss potential environmental impacts from the land exchange, but limited the scope of some of that discussion to impacts associated solely with the proposed project.

¹¹ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act*. p.8

“... each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural ecosystems must use natural ecological boundaries ... to ensure ... all effects¹²”,

a meaningful cumulative effects analysis requires that the agency look beyond this action and this field office. A case in point is the Harrington Penstemon, a BLM Sensitive and a Forest Service Species of Viability Concern. The proposed action would result in a net loss of habitat for this species, but seemingly not very much. However, the Forest Service SVC classification and the fact that this flower is endemic to the State of Colorado require a wider scope of analysis than this action and this field office area; for the Harrington Penstemon, the “natural political boundary” is the State of Colorado. And our organization is aware of at least three other on-going federal actions in the State that would adversely impact this plant’s habitat.

We use the Harrington Penstemon as an example because it is easy to quantify, but the Cumulative Effects analyses in this EIS and others we have analyzed document a net-loss of other resources as well, including wetland, riparian, aquatic, cultural and paleontological resources. CWPL is so concerned about these on-going and overlooked trends, and we are preparing to undertake our data analysis of the resources being traded in current and past land exchanges throughout the state. We have included an embryonic version, see Attachment A – Cumulative Impacts Chart.

CONCLUSION

The FEIS has not demonstrated that this proposed land exchange is in the public interest. As the three alternatives exist in the FEIS; Alternative 1–No Action would best serve the public interest, as it would retain BLM Parcels G, H and I, that have high natural values and critical locations in maintaining public use of the Blue River.

¹² *Ibid.*

This land exchange has been under development for some time and the proponent has included additional recreational features at each step. The FEIS does not provide sufficient assurance that the proposed recreation improvements, trails and access easements will be implemented. And, 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, even with the proposed exchange parcels, serves the public interest.

Sincerely,

A handwritten signature in cursive script, appearing to read "Franz Froelicher".

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

ATTACHMENT A
RECENT AND ONGOING BLM LAND EXCHANGES IN COLORADO
AND FEDERAL ACTIONS RELATED TO BLUE VALLEY RANCH LAND EXCHANGE
CUMULATIVE IMPACTS CHART

NAME OF EXCHANGE	BUFFALO HORN		SUTHEY RANCH		BLUE VALLEY RANCH		NEW TRAIL BELOW GREEN MT ON FOREST SERVICE LAND	
OVERVIEW								
Field Office	White River/Little Snake River		Colorado River Valley		Kremmling		WRNF	
Number of Proponents (Includes Beneficiary Proponents that are receiving land and not known to be exchanging land)	1		2		4		Connected Action with Blue Valley Ranch Land Exchange	
Facilitator/Lead Consultant			Western Lands Group		Western Lands Group			
Acreage								
Federal to be exchanged	2,652		2,200		1,489			
Non-Federal to be exchanged	1,327		670		1,830			
Other privately owned land adjacent to Federal Land (that is to be exchanged)	yes							
LAND CHARACTERISTICS								
<i>Land Ownership (to be exchanged)</i>	<i>Federal</i>	<i>Non-Federal</i>	<i>Federal</i>	<i>Non-Federal</i>	<i>Federal</i>	<i>Non-Federal</i>	<i>Federal</i>	<i>Non-Federal</i>
Number of Parcels	14	1+portions donated	6	2 + \$ donations	9	9		
Habitat Types								
Special Status Species								
Sage Grouse PHMA (acres)	14				762	1135		
Harrington Penstemon (acres)			yes		6.3	0.3		
Migratory Birds	yes		raptor, bat, Brewer's sparrow		yes	yes	yes	
Other Birds								
Critical Game								
Deer severe/critical winter			yes		225	110	yes	
Elk severe/critical winter			yes		80	54	yes	
Elk production	1208	some***			253	246		
Pronghorn winter					188	261	yes	
Bighorn Sheep			yes				yes	
Lynx Habitat							yes	
Riparian (acres)	yes							
Wetland (acres)					77.7			
Stream/river frontage (linear feet)	6,000 (1.1 miles)				22,509		1.65 miles	
Water Rights (cfs)					5.377	3		
Significant cultural/paleontological/historical resources	3				3			
Unique Features *			wild turkey habitat		fen			
Special Designations	LWC-Wilderness Characteristics							
Developed recreation proposed to replace wild natural areas that have other opportunities (e.g. hunting)			yes		yes		new trail to river proposed	
Adjacency to other private lands (besides proponent)	yes				yes		yes	
Adjacency to other public lands	yes		yes		no	yes	yes	
Public access			yes					
Motorized	some				some	yes		
Year-round	no				some	some		
Non-motorized	yes		yes		yes	yes	yes	
Boat/Float Access					yes****	yes****		
Special Use Permits to entities other than proponent								
Grazing	9							
Outfitting (Hunting)	5							
River Use and Fishing								
Other								

NOTES

* Old growth, fens, etc.

** This land exchange is identified in the land tenure section of the Buffalo Horn EA, not the cumulative impacts section. There are several other land tenure adjustments identified here, but the descriptive data is spotty.

*** The final EA does not specify for parcel B (FEA at 29).

**** The type of access differs in that the existing federal access provides a remote float and the exchange would provide direct access from a parking area.



COLORADO

Parks and Wildlife

Department of Natural Resources

Director's Office
6060 Broadway
Denver, CO 80216
P 303.297.1192

November 1, 2021

Ms. Jamie Connell
State Director
Colorado State Office
USDI Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215

Re: Colorado Parks and Wildlife Species-Specific High Priority Habitat Avoidance, Minimization, and Mitigation Recommendations for Land Use Development Activities

Dear Jamie,

As you know, Colorado Parks and Wildlife (CPW) has statutory authority to perpetuate the wildlife resources of Colorado, to provide a quality state parks system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations. This mission is implemented through our 2015 Strategic Plan¹ and the goals it embraces are designed to ensure that CPW is a national leader in wildlife management, conservation, and sustainable outdoor recreation for current and future generations. Part of this implementation includes responding to local, state, and federal agency requests for recommendations to avoid, minimize, and mitigate the impacts of various types of land use development activities on wildlife resources in Colorado.

CPW has adopted several internal guidance documents prepared specifically to guide our staff and promote statewide consistency when making land use development recommendations across jurisdictions, species, and habitat types in Colorado. In early 2020, CPW's internal subject matter experts consulted with peers in other agencies and academic institutions to update our guidance documents to incorporate new information and the best available science. *CPW's Recommendations to Avoid and Minimize Impacts to Wildlife from Land Use Development in Colorado* (Attachment 1) reflect this latest update. **These recommendations are now CPW policy to guide staff when commenting on site-specific land development proposals. They will also guide our staff when engaged with the USDI Bureau of Land Management (BLM) on NEPA projects, including large scale planning efforts such as Resource Management Plan revisions as well as individual projects such as recreation and energy development proposals.** Note that these recommendations have also been incorporated into the Colorado Oil and Gas Conservation Commission's revised regulations implementing SB 19-181, and they will guide our fluid mineral lease stipulation recommendations for BLM quarterly lease sales.

¹ Colorado Parks and Wildlife 2015 Strategic Plan (November 2015)
<https://cpw.state.co.us/Documents/About/StrategicPlan/CPWStrategicPlan.pdf>



While the recommendations outlined in the attached document do not cover all wildlife species in Colorado, they do cover the species and habitats that CPW is concerned about for which we have spatial data and reliable information (peer-reviewed published research) to make defensible management recommendations during site-specific land use analyses. Our intent is to update our recommendations every 3-5 years, or as needed when new wildlife science becomes available. Note that Attachment 1 includes only biological recommendations. In addition to these biological recommendations, CPW recommends development avoidance buffers for some special management areas significant to wildlife and wildlife recreation in Colorado, including State Wildlife Areas, State Parks, and Colorado Natural Areas.

In summary, to promote the landscape-scale habitat function necessary to maintain robust wildlife populations across Colorado, CPW strives to make consistent recommendations for all types of development relative to wildlife across jurisdictions. With that in mind, please accept the attached recommendations as CPW policy to guide our input for development activities occurring on all lands in Colorado, regardless of ownership. CPW is currently engaged in multiple BLM and USDA Forest Service land management plan revisions, as well as with the Colorado State Land Board, local agency planning, and land use development permitting. We are submitting these same recommendations across jurisdictions to guide planning and permitting efforts statewide. CPW anticipates that the recommendations included with this letter will be integrated, as appropriate, into BLM Resource Management Plans as they are revised, and upcoming federal, state, and local permitting processes. These recommendations can also be found on our webpage here:

https://cpw.state.co.us/Documents/Conservation-Resources/Energy-Mining/CPW_HPH-Map-Layers.pdf

We appreciate the opportunity to engage with the BLM on wildlife and land use issues across Colorado. We look forward to continuing our close coordination with you and your staff in the coming months and years. Please let us know if we can provide additional information that you would find helpful as a follow-up to this letter.

Sincerely,



Dan Prenzl
Director

Encl: Attachment 1. Colorado Parks and Wildlife Recommendations to Avoid and Minimize Impacts to Wildlife from Land Use Development in Colorado

cc: CPW: Cory Chick, Jacob Brey, Garrett Watson, Brett Ackerman, Mark Leslie, Jeff Ver Steeg, Reid DeWalt, Taylor Elm, Karen Voltura, Brandon Marette, Brian Magee, Danielle Neumann