UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

COLORADO WILD PUBLIC LANDS, INC.,	)	**IBLA Docket No. _____**
Appellant.	)	**Appeal of the Decision Record for the Buffalo Horn Land Exchange, DOI-BLM-CO-N050-2017-0009-EA, Case File Nos. 2200, 2100 (Co-923); COC-76595 FD PT; COC-79653; COC-79652 PT; Rio Blanco and Moffat Counties, Colorado**

NOTICE OF APPEAL AND PETITION FOR STAY

Pursuant to 43 C.F.R. §§ 4.21, 4.410-4.413, Colorado Wild Public Lands, Inc. ("COWPL" or "Appellant") files this Notice of Appeal and Petition for Stay of a decision made by Bureau of Land Management ("BLM") Acting Northwest District Manager, Catherine L. Cook. On January 14, 2021, Ms. Cook signed a Decision Record approving a proposed exchange of certain parcels of land between BLM and Buffalo Horn Properties, LLC ("Buffalo Horn"), identified as DOI-BLM-CO-N050-2017-0009-EA and Casefile Numbers: 2200, 2100 (Co-923); COC-76595 FD PT; COC-79653; COC-79652 PT (hereinafter the "Land Exchange"). This appeal also responds to the September 7, 2023 Colorado State Director's Decision to deny COWPL's March 8, 2021 administrative protest ("Protest Denial"), which COWPL's counsel received via certified mail on September 13, 2023. This appeal is timely filed. *See* 40 C.F.R. 4.411(a)(2) ("A person served with the decision being appealed must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of service of the decision"); *see also* Protest Denial at 3, 7 (same).

Concurrently with this Notice of Appeal, COWPL requests a stay of the Land Exchange through the duration of the appeal process. Under applicable regulations, a stay is imposed by virtue of the filing of this Notice of Appeal and Petition for Stay and continues for 45 days thereafter, unless the Interior Board of Land Appeals (the "Board") denies the stay request during that time. *See* 43 C.F.R. § 4.21; *Jim Wilkin Trucking*, 142 IBLA 46, 47 (1997). A stay is warranted because COWPL is likely to succeed on the merits of its appeal, will suffer irreparable harm absent a stay, COWPL's harm outweighs any delay in completing the Land Exchange, and the public interest favors the requested temporary stay.

FACTUAL BACKGROUND

A. COWPL

COWPL, founded in 2014, is a volunteer-based, non-profit corporation based in Basalt, Colorado with members distributed through the state of Colorado. COWPL was formed to protect the integrity, size, and quality of Colorado's public lands from diminution by private interests by advocating for transparency and public engagement in federal land exchanges. COWPL's members are concerned citizens who value Colorado's public lands and waters for their recreational use, habitat for wildlife and native plants, wild-land character, and their economic assets. COWPL monitors land exchanges to ensure compliance with applicable laws and regulations and to ensure that the public interest is represented throughout the process. Through the monitoring of public land transactions, decision-making, and management, COWPL advocates for the retention of public land assets, access to these lands, maintaining their ecological integrity, and for ensuring their true economic value is considered and realized.

B. Buffalo Horn Land Exchange

Buffalo Horn owns the already sprawling Buffalo Horn Ranch, located in Moffat and Rio Blanco Counties, near Meeker, Colorado. The Ranch is contiguous with or surrounds BLM lands in the Strawberry Creek area and will be further enlarged by the proposed Land Exchange. *See* Final Environmental Assessment ("Final EA") at 1, 101 (Map 1. Alternative A), 102 (Map 2. Alternative B).

In an effort to consolidate its ownership in the area, Buffalo Horn first approached the BLM White River Field Office ("WRFO") about a land exchange in 2008, but the WRFO was not able to dedicate the time necessary for considering a land exchange at that time. *Id.* at 1. In 2011, the parties resumed discussions and began to formulate the proposed exchange with a proposal from Buffalo Horn to exchange approximately 6,645 acres of private land in 6 parcels for 7,629 acres of federal land in 18 parcels. *Id.* This exchange proposal was evaluated by a BLM interdisciplinary team and revised in January 2013 to include 4,035.77 acres of private property in 3 parcels (A-3, A-5, and B) for 3,806 acres of Federal land in 16 parcels (C-1, C-2, D-3, D-4, E-1, E-2, E-3, F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, and G).[1] *Id.*

In May 2014, the WRFO and Buffalo Horn signed a Memorandum of Agreement ("MOA") for the preliminary review and feasibility study. On December 1, 2016, the WRFO and Buffalo Horn signed the Agreement to Initiate a Land Exchange. Almost two years later, on December 8, 2016, BLM issued a Notice of Exchange Proposal for the Land Exchange ("Notice"), thereby initiating the NEPA scoping process.[2] In April 2017, BLM published its

[1] Most of the parcels are within the WRFO; however, a portion of Parcel C-1 lies within the Little Snake Field Office ("LSFO").

[2] All administrative record documents, including the decision documents, preliminary Environmental Assessment, scoping documents, appraisals, and protests are available on BLM's Buffalo Horn Land Exchange web page at: https://eplanning.blm.gov/eplanning-ui/project/69551/570.

scoping comments, which included comments from COWPL and its members, including Bradley Bauer, Rick Tingle, and Albert and Mary Krueger. Scoping Comments at 1. These scoping comments raised many of the same concerns that were included in COWPL's Protest and are reiterated within this petition for stay, including concerns related to the effect of the Buffalo Horn Land Exchange on adjacent landowners' property values, public access to high-quality hunting areas, wildlife conservation, and grazing allotments. *See id.* at 2–4.

On May 7, 2018, BLM issued its preliminary environmental assessment ("Preliminary EA") and preliminary finding of no significant impact ("Preliminary FONSI"). The Preliminary EA proposed multiple alternatives, including the preferred Alternative B, which consisted of a collection of federal parcels totaling 2,815 acres, including a 1,759.57-acre parcel C-1. Private Parcel B was listed at 1,835.26 acres. In their comments to the Preliminary EA, COWPL and its members again raised concerns with the Land Exchange as proposed in the Preliminary EA. Public Comments on Preliminary EA at 1–3.

After the public comment period on the Preliminary EA had closed, however, BLM assembled an inconsistent collection of federal parcels for the Federal Appraisal, which combined parcels from both alternatives A and B (totaling 2,652 federal acres) and a smaller configuration of C-1 that removed two 40-acre parcels BLM proposed to retain for mitigation. Parcel B remained unchanged in the Non-Federal Appraisal. In the Supplemental Appraisal, however, because the value of the non-federal parcels was lower than the value of private Parcel B and a land exchange must proceed on equality of valuation, Parcel B was split into five sub-parcels. New Parcel B-1 (totaling 1,327.06 acres) became the only parcel to be exchanged and Buffalo Horn would then donate the remaining parcels (totaling 508.20 acres).

On January 14, 2021, BLM issued its final decision documents, including the Final EA and final FONSI ("Final FONSI"). In the Final EA, BLM again proposed multiple alternatives, with Alternative B reverting to the acreages provided in the Preliminary EA. (i.e., 2,815 acres of federal land; 1,835.26 acres for Parcel B). However, in the General Public Notice and Decision that were issued with the Final EA, BLM approved a modified version of Alternative B. Record of Decision at 2. Under modified Alternative B, BLM decided to issue a perpetual right-of-way to Buffalo Horn, and to accept an access easement in order to provide for mutual access through the retained parcels of federal land on Parcel C-1. Record of Decision at 2. Under the approved alternative (considering both the exchange and donation transactions), BLM will convey 14 parcels (modified version of C-1, C-2, D-4, E-1, E-3, F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, and G, totaling 2,652 acres) to Buffalo Horn and Buffalo Horn will convey 5 parcels (B-1, B-2, B-3, B-4, and B-5, totaling 1,835.26 acres) to BLM. Record of Decision at 2. Of the parcels that Buffalo Horn is to convey, 4 parcels (B-2, B-3, B-4, and B-5, totaling 508.2 acres) are isolated "inholdings" between the non-federal exchange parcel and other BLM-managed public land that Buffalo Horn will donate to BLM. Notice of Decision at 1. COWPL filed its Protest on March 8, 2021. Protest. The State Director dismissed the Protest on September 7, 2023. *See* Protest Denial at 1–2. This notice of appeal and petition for stay follow.[3]

ARGUMENT

The Board should grant a stay of the Land Exchange under 43 C.F.R. § 4.21(b)(1).

A. COWPL Is An Adversely Affected Party.

Before demonstrating that a stay is warranted, a petitioner must first show that it can maintain an appeal. *See* 43 C.F.R. § 4.21(a)(2). To maintain an appeal, the petitioner must (1) be

[3] Pursuant to 43 C.F.R. § 4.412(a), COWPL will submit its statement of reasons for appeal within 30 days of filing this Notice of Appeal.

a party to the case; and (2) be adversely affected by the decision being appealed. *Id.* § 4.410(a); *Nat'l Wildlife Fed'n*, 129 IBLA 124, 125 (1994). COWPL meets both prongs.

First, COWPL is a party to the case. "A party to the case . . . is . . . one who has . . . participated in the process leading to the decision under appeal, e.g., by . . . commenting on an environmental document" concerning the proposed action. 43 C.F.R. § 4.410(b). Here, COWPL submitted written comments to BLM regarding the proposed Land Exchange during the public comment periods provided by BLM.

Second, COWPL will "be adversely affected" by the Land Exchange. *Id.* § 4.410(a). To show that it will be adversely affected, a petitioner must demonstrate that it has a "legally cognizable interest" and that "the decision on appeal has caused or is substantially likely to cause injury to that interest." *Id.* § 4.410(d). This requisite "interest" can be established by cultural, recreational, or aesthetic uses, as well as enjoyment of the public lands. *S. Utah Wilderness All.*, 127 IBLA 325, 327 (1993); *Colo. Env't Coal.*, 171 IBLA 256, 260-61 (2007) (hiking in area impacted sufficient to establish required "interest"); *Wyo. Outdoor Council*, 153 IBLA 379, 383 (2000) (legally cognizable interest in the land "need not be an economic or a property interest. Use of the land will suffice.") The Board does not require a showing that an injury has actually occurred. Rather, a colorable allegation of injury suffices. *Powder River Basin Res. Council*, 124 IBLA 83, 89 (1992). Moreover, a party need not even show that it has actually set foot on the impacted parcel or parcels to establish use or enjoyment for purpose of demonstrating adverse effects. Rather, "one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests." *Coal. of Concerned Nat'l Park Retirees*, 165 IBLA 79, 84 (2005).

COWPL's 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. Mary Krueger Decl. ¶¶ 4, 6 (Ex. 1); Albert Krueger Decl. ¶¶ 4, 6 (Ex. 2); Tingle Decl. ¶ 4 (Ex. 3); Bauer Decl. ¶ 3 (Ex. 4). The Land Exchange will harm COWPL's and its members' interests by conveying publicly accessible public lands to private ownership, not ensuring that the formerly federal lands are managed to protect natural resources, and creating precedent that encourages future lopsided land exchanges that are not in the interest of the public, Colorado, the United States, or the wild plant and animal communities that depend on the lands at issue. The Land Exchange further injures COWPL and its members because it is poor public policy, violates federal law, and results in the loss of valuable public lands.

COWPL members provided comments on the Land Exchange, at both the scoping stage and on the Preliminary EA, and on March 8, 2021 COWPL filed an administrative protest of the Land Exchange ("Protest"). *See* Protest; Mary Krueger Decl. ¶ 7; Albert Krueger Decl. ¶ 7; Tingle Decl. ¶ 7; Bauer Decl. ¶ 10. The comments and Protest raised violations of two key laws that protect COWPL members' concrete interests—the Federal Land Policy and Management Act ("FLPMA") and National Environmental Policy Act ("NEPA"). Protest at 2. Voiding the Land Exchange will remedy COWPL members' concrete and procedural injuries.

B. The Land Exchange Should Be Stayed Pending Appeal.

The Board considers four factors when determining whether to grant a stay: (i) the likelihood of the petitioner's success on the merits; (ii) the likelihood of immediate and irreparable harm if a stay is not granted; (iii) the relative harm to the parties if a stay is granted or denied; and (iv) whether the public interest favors a stay. 43 C.F.R. § 4.21(b)(1). The third and

fourth factors merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

As set forth below, each factor strongly supports a stay of the Land Exchange.

i. COWPL Will Likely Succeed on the Merits Of Its Appeal.

The Board should grant a stay because COWPL will likely succeed on the merits of its claims, as BLM failed to comply with FLPMA and NEPA when it approved the Land Exchange. BLM violated FLPMA by ignoring evidence that the value of the federal lands to be exchanged exceeds the value of the private lands to be acquired, which demonstrates that the Land Exchange is not in the public interest, as required by FLPMA. The Land Exchange also does not comply with FLPMA because the underlying valuation appraisals had significant flaws and failed to account for the most likely use of the federal lands. In addition to violating FLPMA, BLM also violated NEPA when it approved the Land Exchange by failing to prepare an Environmental Impact Statement ("EIS").

In requesting a stay, a petitioner need only raise "serious questions" going to the merits. *Sierra Club*, 108 IBLA 381, 384-85 (1989) ("[I]t will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation."). A petitioner's likelihood of success need not be "free from doubt." *Jan Wroney*, 124 IBLA 150, 152 (1993); *Island Mountain Protectors*, 144 IBLA 168 (1997).

a. The Land Exchange Violates FLPMA Because It Does Not Serve the Public Interest.

Under FLPMA, BLM may only approve a land exchange after determining that "the public interest will be well served by making that exchange." 43 U.S.C. § 1716(a). In reaching that determination, BLM must give "full consideration" to the "needs of State and local people,"

id., as well as the following factors: (1) "Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values"; (2) "enhancement of recreation opportunities and public access"; (3) "consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development"; (4) "consolidation of split estates"; (5) "expansion of communities"; (6) "accommodation of land use authorizations"; (7) "promotion of multiple-use values"; and (8) "fulfillment of public needs." 43 C.F.R. § 2200.0-6(b); 43 U.S.C. § 1716(a). In addition to the foregoing mandatory factors, BLM may consider any other factors it deems relevant. *Nat'l Coal Asso. v. Hodel*, 675 F. Supp. 1231, 1243 (D. Mont. 1987).

After evaluating the above factors, BLM must make the following two findings to determine that the proposed land exchange is in the public interest: "(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." 43 C.F.R. § 2200.0-6(b). "The public interest finding is arbitrary and capricious if BLM fails to consider any mandatory factors or to make the necessary determinations." *Shoshone-Bannock Tribes of Fort Hall Rsrv. v. Daniel-Davis*, No. 4:20-CV-00553-BLW, 2023 WL 2744123, at *7 (D. Idaho Mar. 31, 2023), *amended*, No. 4:20-CV-00553-BLW, 2023 WL 5345102 (D. Idaho June 30, 2023).

Here, BLM's determination that the Land Exchange supports the public interest is arbitrary and capricious because it is unsupported by the record and BLM failed to adequately

consider significant impacts of the Land Exchange. *First*, the Land Exchange does not meet the needs of local residents because it negatively impacts their livelihoods and decreases their property values. *Second*, the Land Exchange results in the loss of wildlife habitat and reduces access to cultural and paleontological resources. BLM therefore failed to comply with FLPMA when it approved the Land Exchange.

1. BLM largely ignored the needs of State and local residents and focused instead on Buffalo Horn's interests when evaluating the Land Exchange and preparing the Final EA. For example, BLM admits that federal Parcel C-1 "does provide high quality big game hunting opportunities." Protest Denial at 5. BLM also acknowledges in the Final EA that several local private landowners operate hunting lodges or lease portions of their land to earn supplemental income. Final EA at 52, 59. Nevertheless, when COWPL raised concerns about local landowners losing this source of income and suffering a devaluation of their properties, BLM discounted such concerns, surmising that because some of the landowners are "adjacent to other BLM lands that are not part of the exchange," those landowners "could presumably still provide access to customers for hunting lodges or leases." Protest Denial at 1. BLM arrived at this conclusion based solely on BLM's own maps and without determining whether the remaining adjacent BLM land is even suitable for hunting or of the same quality as the federal land included in the Land Exchange. Indeed, several COWPL members confirmed that the Land Exchange will eliminate or restrict their existing access to public lands. *See* Tingle Decl. ¶ 6; Bauer Decl. ¶ 9. Because BLM merely assumes that local landowners will not be harmed by the Land Exchange, BLM's conclusion does not support a finding that the Land Exchange is in the public interest. *See Ctr. For Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 647 (9th Cir. 2010) (concluding that BLM's "analysis of the public interest under FLMPA is fatally flawed" where BLM makes

unreasonable assumptions about future land use and environmental consequences from a land exchange).

Local grazing allotments will also be negatively affected by the Land Exchange, forcing residents to suffer a reduction in animal unit months ("AUMs")[4] for their cattle. This is because Parcel B, which is currently private land, contains lower-quality grazing land than the public parcels BLM is giving up, as Parcel B is infested with invasive plants and weeds. *Compare* Final EA at 47 ("[T]he federal parcels that would be transferred to private ownership are to varying degrees well-suited for livestock grazing"), *with id.* at 66 ("Parcel B has extensive areas within Smith Gulch infested with Scotch thistle, … musk thistle, … bull thistle, … and houndstongue."). In the Final EA, BLM once again brushed aside COWPL's concerns, portraying the loss in AUMs as insignificant. *See, e.g.*, Final EA at 47 (minimizing the loss in AUMs to the Colowyo Commons allotment as "only about 7 percent of the 520 BLM AUMs" in the allotment).

Because BLM did not adequately consider and undervalued local residents' loss of supplemental income, property values, and grazing rights, BLM's conclusion that the Land Exchange is in the public interest is arbitrary and capricious. *Utah Env't Cong. v. Troyer*, 479 F.3d 1269, 1280 (10th Cir. 2007) (an agency decision is "arbitrary and capricious if the agency entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise") (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) (cleaned up).

[4] An AUM is the amount of forage required to maintain a cow and her calf for a one-month period.

2. The Land Exchange also does not serve the public interest because it gives up important wildlife habitat and cultural and paleontological resources without reservation, further undermining the public interest. Under the Land Exchange, Parcels G and E-1, which contain priority and general habitat for the Northwest Colorado Greater Sage-Grouse, would be traded to Buffalo Horn. Final EA at 10–11. In addition to trading away sage-grouse habitat, the Land Exchange would also result in the loss of "unique" aspen and riparian communities, which support big game and nongame species, including migratory birds, as well as elk production areas. *Id.* at 29, 30, 66, 67, 68, 72, 74, 88.

Once the Land Exchange goes into effect, BLM's current management mandate to protect these habitats will abruptly end, thereby exacerbating habitat loss. For instance, BLM will no longer be able to sustainably manage grazing on the parcels, leaving the habitat vulnerable to over-grazing or other habitat damage. As soon as it takes ownership of the federal parcels, Buffalo Horn could "manage" these lands as it sees fit (including by developing them)—or not "manage" them at all, thereby jeopardizing the continued value of these wildlife habitats. Finally, increased public use of BLM's newly acquired Parcel B could "disrupt and displace wildlife," *id.* at 30, 73, making BLM's already one-sided exchange even worse for wildlife habitat that remains under BLM management after the Land Exchange.

In the Protest Denial, BLM again makes assumptions and erroneous value judgments about the loss of habitat that are unsupported by the record and are therefore arbitrary and capricious. First, BLM assumes—without evidentiary support or a binding reservation of management rights—that "the overall management of the lands is not expected to change much as the lands are primarily suited for livestock grazing and wildlife habitat." Protest Denial at 4; *see also* Final EA at 74 ("It is unknown how a change in management may affect this system, but

there is no reason to believe that it would vary drastically from current management."). The Board has previously held that relying on the assurances of a prospective owner and failing to consider protective covenants are "serious deficiencies in the evaluation of [a] proposed land exchange." *Nat'l Wildlife Federation*, 82 IBLA 303 (1984) ("Assurances of the potential owner do not ensure proper land use and protection of the public interest. The State Director should have studied the possibility of proposing conditions or covenants to guarantee protection of wildlife and recreational values in land.").

Elsewhere in the Protest Denial, BLM seemingly concludes that protecting sage-grouse habitat should not be prioritized because it is "largely impractical" and the habitat included in the Land Exchange is "not considered to be suitable sage-grouse habitat" anyway. Protest Denial at 7. Rather than offering an alternative solution that would protect the sage-grouse habitat, BLM unilaterally determined that the habitat is unsuitable to meet its pre-determined outcome of approving the Land Exchange. Such a decision cannot stand under FLPMA.

In addition to the loss of sage-grouse habitat, four scientifically important paleontological localities will also be lost in the Land Exchange. Those four sites were identified on Parcel C-1, one of which—a dinosaur-limb bone fragment—remains on the property. *Id.* at 77. Thus, BLM admits the transfer of Parcel C-1 "would result in a loss of scientific data." *Id.* Parcel C-1 also contains a site eligible for listing on the National Register of Historic Places. *Id.* at 75. As a result, its transfer "without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" would result in a finding of adverse effect to the property. 36 C.F.R. § 800.5(a)(2)(vii).

To mitigate for these effects to paleontological and cultural resources, BLM proposes to re-configure Parcel C-1 to leave two 40-acre parcels containing the dinosaur-limb bone fragment

and historic property under BLM management. Final EA at 76, 78. Under this proposal, however, these resources will now be either completely or predominantly surrounded by private property, reducing public access to the parcels, as BLM concedes. *See* Protest Denial at 5. Accordingly, Buffalo Horn would reap the benefits of these parcels without any management obligations and without compensating BLM for this benefit.

In sum, the public interest is not "well served" by the Land Exchange, thus violating FLPMA. *See* 43 U.S.C. § 1716(a).

b. The Appraisals Underlying the Land Exchange Do Not Comply With FLPMA Or BLM Regulations.

BLM's approval of the Land Exchange also violates FLPMA because the approval was predicated on flawed and incomplete valuations of the federal and private lands.

BLM may not exchange federal land for private land unless it receives "fair market value" for the lands being disposed. 43 U.S.C. § 1701(a)(9). "Market value" means the "probable price" in a "competitive and open market" where parties "act[] prudently and knowledgeably, and the price is not affected by undue influence." 43 C.F.R. § 2200.0-5(n). In estimating market value, the appraiser must "[d]etermine the highest and best use of the property," "[e]stimate the value of the lands and interests as if in private ownership and available for sale in the open market," and "[i]nclude historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market." *Id.* § 2201.3-2(a).

In addition to ensuring lands are valued at market prices, BLM may only conduct a land exchange when the public and private properties proposed to be exchanged are of "equal value." 43 U.S.C. § 1716(b). To ensure this requirement is met, appraisals are performed on all the properties at issue. *Id.* § 1716(d)(1). As detailed in the regulations, "lands or interests to be

exchanged shall be of equal value or equalized in accordance with the methods set forth in § 2201.6 of this part." 43 C.F.R. § 2200.0-6(c). These equalization methods include modifying or eliminating certain lands from a proposed exchange and the use of cash equalization payments. *Id.* § 2201.6(a).

By regulation, the appraisal also must comply with the Uniform Appraisal Standards for Federal Land Acquisitions ("UAS"). *Id.* § 2201.3. Under the UAS, highest and best use is defined as "[t]he highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future." *Shoshone-Bannock Tribes*, 2023 WL 2744123 at *9 (quoting The Appraisal Institute, UAS 101). The highest and best use is required to be: (i) physically possible; (ii) legally permissible; (iii) financially feasible; and (iv) maximally productive. UAS, § 4.3.1 (2016); 43 C.F.R. § 2201.3.

To support the Land Exchange, BLM provided appraisals of the private land and federal parcels. Both appraisals are rife with errors and fail to comply with FLPMA and the UAS.

1. The Department of Interior's Appraisal and Valuation Services Office ("AVSO") issued its appraisal report for the private Parcel B on January 30, 2019 ("Non-Federal Appraisal"). The Non-Federal Appraisal determined that the highest and best use of Parcel B is for "[r]ural residential homesites (up to eleven lots use by right), with complementary agriculture, recreation, and/or mining." Non-Federal Appraisal at 6, 31. This conclusion ignores reality. Because the current—and longstanding—use of the land is for "hunting and grazing," Non-Federal Appraisal at 24, AVSO should have considered that use in its assessment of the highest and best use of the property. Even putting current use aside, BLM itself believes that the most probable and reasonable use of Parcel B is for recreation, hunting, and grazing, not rural residential development. *See e.g.*, Final EA at 35 ("Parcel B would provide improved access to

approximately 15,000 acres of BLM public land [and] … itself provide a spectrum of recreational opportunities, not limited to big game hunting, but also including hiking, backpacking, horseback riding, and camping throughout the year."). Remarkably, despite AVSO's determination of highest and best use as rural residential, the appraisal itself used properties for comparison that "are typical ranches for the area, and are similar to the subject as they are *well suited for seasonal livestock grazing and mountain recreation (especially hunting)*." *Id.* (emphasis added).

The upshot is that AVSO vastly overvalued the private property included in the Land Exchange, inflating the purported benefit to the public. AVSO's determination of highest and best use overvalues Parcel B based on the assumption that development of rural homesites is physically possible, financially feasible, and maximally productive—even though such use has never occurred on the land and there is no indication that such use will ever occur. AVSO's appraisal also undermines its own conclusion. The property is several hours from the largest nearby cities—Denver and Salt Lake City—in an area with an economic base of ranching, mining, energy production, and recreation. Non-Federal Appraisal at 15. The area in which Parcel B is situated is "less affluent, and dominated by working class residents." *Id.* The parcel also lacks irrigated acreage or live water amenities. *Id.* at 6, 22. Though electric and telephone service are available within one-quarter mile and "could be extended to the boundary for rural residential homesite(s) at some cost," there are currently no amenities. *Id.* at 6, 23, 30. Also, vehicular access is at best "seasonal" via roughly five miles of unimproved BLM roads and requires high clearance. *Id.* at 22.

In the Protest Denial, BLM claims that the "passages from the appraisal criteria that COWPL quotes" in the Protest are "incomplete and therefore do not accurately represent or

explain the analysis of highest and best use." Protest Denial at 8. Yet BLM does not contest that the "highest and best use" of the large non-federal parcel "was found to be some type of rural residential development." *Id.* Rather than explain why the Non-Federal Appraisal's conclusion is defensible, BLM instead merely copied and pasted excerpts from the Non-Federal Appraisal into the Protest Denial without any analysis of COWPL's arguments. *See id.* at 8–9.

In sum, BLM's conclusion about Parcel B's market value is "not in accordance with" FLPMA's highest-and-best use standard and also "runs counter to the evidence before the agency." *Colorado Env't Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1990).

2. AVSO's appraisal of the federal parcels ("Federal Appraisal") included in the Land Exchange also contain significant flaws that violate FLPMA and the UAS.

The problems with AVSO's Federal Appraisal are numerous, as set forth in COWPL's Protest. *See* Protest at 15–20. Among other things, the Federal Appraisal:

1) improperly discounts the value of the federal parcels by adjusting comparable sales downward as much as 50% based on the erroneous determination that the federal parcels "do not have direct vehicular access," Federal Appraisal at 28;

2) ignores the value of certain federal parcels' continuity with adjacent public lands;

3) unlawfully aggregates the federal parcels into a single parcel;

4) fails to consider the value of combining the federal parcels with Buffalo Horn's existing ranch;

5) inconsistently applies the comparable sales to the federal parcels and non-federal parcels; and

6) disregards other recent comparable acquisitions by Buffalo Horn in determining the value of the federal parcels.

See id.

In response to these arguments, BLM primarily relies on 43 C.F.R. § 2201.3-2's requirement that the appraiser "estimate the value of the lands and interests as if in private ownership and available for sale in the open market." Protest Denial at 12. According to BLM, "one cannot set the value in an exchange by considering Buffalo Horn's adjoining property." *Id.* BLM's view is that 43 C.F.R. § 2201.3-2 and the UAS prohibit an appraiser from "bas[ing] the market value on an assumed buyer" and instead require an appraisal to be "based on a hypothetical buyer and seller." *See id.*

BLM's interpretation of the regulation and UAS standards misses the mark. In a case decided earlier this year, the U.S. District Court for the District of Idaho considered the very same argument and concluded that BLM's reliance on an appraisal that neglected to consider the intended use of the property by the proponent was arbitrary and capricious. *Shoshone-Bannock Tribes*, 2023 WL 2744123 at *9–11.

In *Shoshone-Bannock Tribes*, the J.R. Simplot Company had been trying for a "quarter century" to acquire adjacent BLM lands for gypstack development to support its Don Plant, a nearby facility. *Id.* at *3. Ultimately, BLM agreed to a land exchange with Simplot in 2020. In the appraisal report, the appraiser noted that adjacent land uses "are recreational and agricultural in nature and include livestock grazing, hunting, and wildlife habitat." *Id.* at *7. The appraiser consequently determined that the federal land at issue had "limited" potential uses that were "similar to other parcels located in the general area." *Id.* The appraisal report concluded the highest and best use for the federal land was "continued agriculture and recreational uses, wildlife habitat, watershed, with speculative investment potential." *Id.*

The court found that the appraisal violated FLPMA because it did not consider Simplot's intended use of the property for gypstack development. As the court explained,

> [T]he fact that the land here is uniquely valuable to Simplot must be considered in the appraisal because it profoundly affects the most basic underpinnings of market value: supply and demand. Here, Simplot has a high demand for land that can be used to construct a gypstack that extends the life of the Don Plant. Such land is in limited supply. These facts would determine "the value of the lands . . . if in private ownership and available for sale in the open market." 43 C.F.R. § 2201.3-2(a). Yet they played no role in the appraisal.

Id. at *10 (citation omitted). Because the appraisal failed to properly evaluate "the specific intent of the land exchange," the court concluded that BLM was "willfully blind" to the potential value of the land, making BLM's reliance on the appraisal arbitrary and capricious. *Id.* at *9–11.

As in *Shoshone-Bannock Tribes*, BLM here also relied on an appraisal that ignored the intended use of the property by Buffalo Horn. As AVSO concluded in its appraisal, one of the possible highest and best uses of the federal parcels is "assemblage with adjacent private land." Federal Appraisal at 6. This use is particularly relevant to Buffalo Horn, whose ranch is located on private property that is contiguous with all, and completely surrounds many, of the federal parcels. *See* Final EA at 101 (Map 1. Alternative A), 102 (Map 2. Alternative B). Indeed, the only reason Buffalo Horn is pursuing the Land Exchange is to enlarge its existing private ranch by adding the federal parcels. But the appraiser did not account for the value that Buffalo Horn will gain by owning a significantly larger parcel of contiguous property with vehicle access that will no longer have isolated federal inholdings and will have continuity with federal lands. In other words, the appraiser and BLM were "willfully blind" to the potential value of the land. *See Shoshone-Bannock Tribes*, 2023 WL 2744123 at *9–11.

Buffalo Horn's consolidation of the land "may or may not be highest and best use of the land, but it cannot be ignored." *Id.* at *11. As in *Shoshone-Bannock Tribes*, BLM's reliance on an appraisal that fails to consider the specific, intended use of the property is "arbitrary and

capricious because [it] entirely failed to consider an important aspect of the problem." *Id.* (citing *O'Keeffe's, Inc. v. U.S. Consumer Product Safety Comm'n*, 92 F.3d 940, 942 (9th Cir. 1996)).

c. The Land Exchange Violates NEPA.

In addition to violating FLPMA, BLM's approval of the Land Exchange also violates NEPA.

NEPA requires that all federal agencies take a "hard look" at environmental impacts of their proposed actions. *New Mexico v. BLM*, 565 F.3d 683, 704 (10th Cir. 2009). "[T]he agency's 'hard look' [must] be undertaken objectively and in good faith, not as a subterfuge designed to rationalize a decision already made or to purposefully minimize negative side effects." *Colo. Env't Coal. v. Salazar*, 875 F. Supp. 2d 1233, 1250 (D. Colo. 2012) (citations omitted)..

BLM violated NEPA in approving the Land Exchange because the Land Exchange required an EIS, which BLM did not prepare after incorrectly concluding an EIS was unnecessary.

NEPA requires federal agencies to circulate for public review an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. Federal agencies may first prepare an EA that includes "sufficient evidence and analysis" to determine whether impacts of the proposed project are significant enough to warrant an EIS. 40 C.F.R. §§ 1508.3, 1501.4(c), (e), 1508.9(a). To evaluate when the impacts of a project are significant, an agency must consider all "direct," "indirect," and "cumulative" impacts. *Id.* §§ 1508.7, 1508.8(a) & (b), 1508.25(c), 1508.27(b)(7). This includes analyzing the short- and long-term effects of the action as a whole and for the affected region, the affected interests, and the locality. *Id.* § 1508.27(a). Additionally, the agency must consider the project area's proximity to unique cultural resources, controversial effects, the

degree to which an action may establish a precedent, cumulative impacts on the environment, and the impacts to a threatened species. *Id.* § 1508.27(b).

An EIS is required whenever an agency finds "possible" significant impacts. *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1224 (10th Cir. 2002); *Airport Neighbors All. v. U.S.*, 90 F.3d 426, 429 (10th Cir. 1996). Here, BLM identified multiple significant impacts associated with the Land Exchange.

First, the federal lands to be exchanged contain wildlife habitat, cultural and paleontological resources, and lands with wilderness characteristics. *See* Section B.i.a., *supra*; Final EA at 10–11, 29–30, 66–68, 71–77. The Land Exchange will substantially impact these areas in a negative manner. While impacts to these areas, standing alone, justify an EIS, the need for an EIS is overwhelming considering the collective impact of the Land Exchange on the areas as a whole.

Second, the Land Exchange has "highly controversial" effects on the quality of the human environment. *See* 40 C.F.R. § 1508.27(b)(4). The controversy surrounding the Land Exchange is evident from the substantial public comments submitted regarding the wisdom and effects of the Land Exchange. In the Protest Denial, BLM claims that the public comments only "focused on support of, or opposition to, the proposed action and/or alternatives, rather than being related to the nature of the effects of the proposed action and alternatives." *See* Protest Denial at 17 (citing BLM NEPA Handbook H-1790-1 at 71). But a close read of the public comments shows otherwise. *See, e.g.*, Final EA at 133–34 (Comments #2, #4, #5, #6, addressing unknown effects of the Land Exchange on the public and wildlife, as well as alternatives).

Third, BLM was required to conduct an EIS because the Land Exchange will establish a precedent and represents a decision in principle. The degree to which an action may "establish a

precedent for future actions with significant effects or represents a decision in principle about a future consideration" must be evaluated when considering whether an action's impacts are significant. 40 C.F.R. § 1508.27(b)(6). This serves to "avoid the thoughtless setting in motion of a 'chain of bureaucratic commitment that will become progressively harder to undo the longer it continues.'" *Presidio Golf Club v. Nat'l Park Serv.*, 155 F.3d 1153, 1162–1163 (9th Cir. 1998) (quoting *Sierra Club v. Marsh*, 769 F.2d 868, 879 (1st Cir. 1985) (requiring an EIS after finding that proposed action would result in "pressure to develop the rest of the island [that] could well prove irreversible"); *Anderson v. Evans*, 371 F.3d 475, 493 (9th Cir. 2004) (requiring an EIS when the agency failed to consider that its decision may affect future agency deliberations).

By approving the Land Exchange, BLM set a precedent and increased the likelihood that well-connected and wealthy landowners will be able to pursue large acquisitions of public lands, as these landowners will see that BLM offered no resistance to or critical analysis of Buffalo Horn's proposed exchange. BLM further relied on incomplete and improper appraisals to value federal land and private land, which facilitated Buffalo Horn's acquisition of the federal parcels and established a precedent for other landowners to follow in the future. Additionally, this exchange sets the stage for future Buffalo Horn land exchanges as Buffalo Horn will be better able to consolidate its current holdings in the future and further encroach upon currently contiguous, large blocks of federal land to create isolated inholdings and absorb those in the future as well. The potential for the Land Exchange to establish precedent and pressure for BLM to accept future exchanges with Buffalo Horn requires BLM to prepare an EIS, and reliance on the EA alone violates NEPA.

By proceeding with an EA instead of an EIS, BLM ignored the significant impacts of the Land Exchange. BLM's approval of the Land Exchange therefore contravenes NEPA.

ii. COWPL Will Be Irreparably Harmed Absent a Stay.

The irreparable harm factor is satisfied where there is a "significant risk" of irreparable injury. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003). Absent a stay of the Land Exchange, COWPL and its members will suffer immediate, irreparable, or substantial harm because, as demonstrated in their declarations, they will no longer be able to access the public land they use for livestock grazing and hunting. Bauer Decl. ¶ 3; Tingle Decl. ¶ 3; Mary Krueger Decl. ¶ 3; Albert Krueger Decl. ¶ 3. Voiding the Land Exchange will remedy the injuries to COWPL and its members.

The Land Exchange will reduce grazing allotments, resulting in financial loss and "near certain and substantial harm" to COWPL and its members. *Double Anchor Ranches, Inc.*, 188 IBLA 78 (2016). Here, for one grazing allotment holder alone, the Land Exchange will result in at least $2,000-3,000 in additional out-of-pocket expenses—not including the monetary value of the additional time and resources that must be expended to transport the cattle to new pastureland suitable for grazing that is farther away. Mary Krueger Decl. ¶ 5; Albert Krueger Decl. ¶ 5. Considering the additional eight grazing allotments on the land in question, *see* Final EA at 44, the ultimate financial impact is likely to be much greater.

The loss of access to high-quality hunting sites will also cause immediate, irreparable harm to COWPL and its members. The Land Exchange will block public vehicular access across Parcel C-2 so that Parcel C-1 can only be accessed by foot following the Land Exchange. Tingle Decl. ¶ 6. Because about half of his clients are older and cannot hike long distances to reach hunting sites, one local outfitter and COWPL member will lose approximately 50% of his clients as a result of this change alone. This extreme reduction in his client base will result in a substantial annual financial loss. Tingle Decl. ¶ 6.

The proposed conversion of the Parcel F-5 will also eliminate hunters' access to prime elk hunting grounds. Elk movement patterns are determined by access to water. Bauer Decl. ¶ 5; Mary Krueger Decl. ¶ 6; Albert Krueger Decl. ¶ 6. Parcel F-5 is the one location in the Strawberry Creek area that most often holds water and, as a result, elk situate themselves there for easy water access. Bauer Decl. ¶ 5. As a result, hunters that are willing to put in the effort to reach Parcel F-5 have once-in-a-lifetime hunting experiences there. Tingle Decl. ¶ 5; *see Davis v. Mineta*, 302 F. 3d 1104, 1116 (10th Cir. 2022) (holding that an injury is irreparable when it cannot be compensated after the fact by monetary damages). With the loss of Parcel F-5, hunters will be confined to a single smaller area in the Windy Gulch Wilderness Study Area where there is no water. As a result, they will have fewer opportunities to harvest elk. Mary Krueger Decl. ¶ 6; Albert Krueger Decl. ¶ 6.

Further exacerbating the loss of Parcel F-5 to the public, if BLM provides vehicle access through Parcel B (which can currently be accessed only by foot), the increase in human traffic is likely to push the elk away from the water-less but last publicly accessible hunting land in the Wilderness Study Area—directly onto Parcel F-5 where no one but Buffalo Horn clients will be able to harvest them. Bauer Decl. ¶ 9.

In addition to the irreparable harm that hunters themselves will face, there will be an irreparable harm to COWPL members who service the hunters. The Land Exchange will result in the general public having increased access to the land for hunting, which will drive away the elk population. If there are fewer elk to harvest, clients of hunting outfitters in the area are less likely return or recommend these outfitters. Mary Krueger Decl. ¶ 6; Albert Krueger Decl. ¶ 6. In *Double Anchor*, IBLA determined that an annual financial loss ranging from $26,246 to $347,490 was irreparable harm. *Double Anchor*, 188 IBLA at 84. Here, the Land Exchange will

reduce one outfitter's client base, resulting in a loss of approximately $56,000 annually. Mary Krueger Decl. ¶ 6; Albert Krueger Decl. ¶ 6.

iii. The Balance of Harms and Public Interest Weigh In Favor of A Stay.

The public interest weighs heavily in favor of a stay. The public has a strong interest in protecting public lands. *Wyo. Outdoor Coordinating Council v. Butz*, 484 F.2d 1244, 1250 (10th Cir. 1973) (overruled on other grounds *Vill. of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970, 973 (10th Cir. 1992)); *Earth Island Inst. v. Forest Serv*., 442 F.3d 1147, 1177 (9th Cir. 2006). Furthermore, the public has an interest in ensuring that federal agencies comply with laws designed to protect public lands and the environment. *Davis v. Mineta*, 302 F.3d at 1116; *Colo. Wild Inc. v. U.S. Forest Serv.*, 523 F. Supp. 2d 1213, 1223 (D. Colo. 2007). As previously explained, the Land Exchange will have immediate, negative impacts on the public. *See* Section B.i.a., *supra*.

The balance of harms also weighs strongly in favor of a stay. As set forth above, COWPL and its members will suffer irreparable harm absent a stay. A temporary stay preserving the status quo will not harm BLM, Buffalo Horn, or the public. BLM regulations anticipate that implementation of a land exchange will only occur after an IBLA appeal is resolved. 43 C.F.R. § 2201.7-2(b)(4) ("an exchange agreement . . . is legally binding on all parties . . . provided . . . a decision to approve an exchange pursuant to § 2201.7-1 is upheld"). There is also no indication that the Land Exchange is urgent. As detailed above, BLM and Buffalo Horn have been in discussions about the Exchange on-and-off for 15 years and BLM took over two-and-one-half years to respond to COWPL's Protest. Since discussions about the Exchange first began in 2008, the public has had the same access to public lands as it has now—and will continue to have under the stay. However, if the Land Exchange is completed, BLM will be forced to expend

significantly more taxpayer resources to manage Parcel B than it currently expends to manage the federal parcels to be exchanged—because Parcel B is adjacent to the Windy Gulch Wilderness Study Area, BLM must develop a new management plan for the parcel, which could take thousands of dollars and many years to complete.

On the other hand, COWPL members will suffer immediate and irreparable harm if a stay is not granted and the Land Exchange becomes effective, as explained above. Further, the Land Exchange will be incredibly difficult to unwind if COWPL succeeds on its appeal, and reversing course after an appeal will likely harm the public, BLM, and Buffalo Horn. *See Desert Citizens*, 231 F.3d at 1187 ("[By] consummat[ing] the land exchange the day after the district court dismissed this action . . . BLM and Gold Fields acted at their peril in transferring the land while on notice of the pendency of a suit seeking an injunction against them."). The public will also be harmed if the Exchange goes into effect because at that point multiple parcels of federal land will be handed over to private ownership and will lose the protected status that is guaranteed to public lands, likely leading to loss of or damage to the environment. Additionally, executing the Land Exchange only to later unwind it would cause confusion among adjacent landowners and the public, who may attempt to access private land under the mistaken assumption that the land is still public.

In sum, the Board should grant COWPL's request for a stay to prevent irreparable harm to COWPL and because granting a stay will not cause any harm to the public or Buffalo Horn.

CONCLUSION

For the reasons described herein, the Board should stay BLM's decision approving the Land Exchange pending COWPL's appeal.

Respectfully submitted this 11th day of October 2023.

HOGAN LOVELLS US LLP

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Colorado Wild Public Lands, Inc.

CERTIFICATE OF SERVICE

I, Elizabeth A. Och, hereby certify that I served the foregoing Notice of Appeal and Petition for Stay upon the following by United States mail on October 11, 2023 in accordance with applicable rules:

BLM Colorado State Office, Division of Energy, Lands and Minerals (CO-920)
Denver Federal Center, Building 40, Door W-4
P.O. Box 151029
Lakewood, CO 80215

U.S. Department of the Interior
Regional Solicitor, Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215

BLM White River Field Office
220 E. Market Street
Meeker, CO 81641
Attn: Field Manager

BLM Northwest District Office
455 Emerson Street
Craig, CO 81625
Attn: Northwest District Manager

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

COLORADO WILD PUBLIC LANDS, INC.,	)	**IBLA Docket No. _____**
Appellant.	)	**Appeal of the Decision Record for the Buffalo Horn Land Exchange, DOI-BLM-CO-N050-2017-0009-EA, Case File Nos. 2200, 2100 (Co-923); COC-76595 FD PT; COC-79653; COC-79652 PT; Rio Blanco and Moffat Counties, Colorado**

Declaration of Mary Krueger

I, Mary Krueger, declare as follows:

1. I am a resident of Meeker, Colorado. My husband, Albert Krueger, and I are the operators of Villa Ranch and Mary K. Krueger Outfitting and members of Colorado Wild Public Lands, Inc. ("COWPL").

2. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would and could competently testify thereto under oath.

3. My husband and I have operated Villa Ranch for 12 years but it has been in our family for over 100 years. We have operated Mary K. Krueger Outfitting for 14 years. Villa Ranch is used for our cow and calf operation and Mary K. Krueger Outfitting supports our commercial hunting and recreation business.

4. We have a conservation easement on the Villa Ranch, which allows us to ensure that our ranch remains a working ranch. And as part of our cow and calf operation, we have been leasing the Vannoy Ranch, which is adjacent to parcel F-8, off and on for around six years. We

currently hold Grazing Permit No. 0502948 for Vannoy Ranch, which provides us access to the Goff Camp Gulch and Cave Gulch grazing allotments. Parcel F-8 lies within these grazing allotments.

5. If we can no longer use the public grazing allotments on parcel F-8 to graze our cattle, we will have to transport our cattle elsewhere to graze, which will result in approximately $2000-3,000 of out-of-pocket expenses, and additional time and resources that we must expend to travel farther to check on the cattle.

6. The Land Exchange will adversely impact our hunting and recreation business. Hunters choose Mary K. Krueger Outfitting for their hunting expeditions because our Special Recreation Permit allows us to access high-quality hunting lands for a remote hunt, most notably parcel F-5. However, as a result of the Land Exchange, we will be pushed off of this parcel to parcel B. Because parcel B is more accessible and BLM may allow road access through it, more hunters will be confined to a single, smaller area in the Windy Gulch Wilderness Study area where there is no water for the elk. Confining hunters to this smaller area will diminish our trademark hunting experience of covering many miles on foot to locate elk. The Land Exchange will also result in the general public having increased access to the land for hunting, which will drive away the elk population. If there are fewer elk to harvest, our clients are less likely return to and recommend Mary K. Krueger Outfitting. A loss of even 30% of our business would be devastating by resulting in a loss of approximately $56,000 annually.

7. I provided comments on the Land Exchange during the opportunity for public comments on the Preliminary Environmental Assessment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated October 10, 2023, in Rio Blanco, Meeker, Colorado.

DocuSigned by:
Mary K. Krueger
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Mary Krueger

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Declaration of Albert Krueger

I, Albert Krueger, declare as follows:

1. I am a resident of Meeker, Colorado. My wife, Mary Krueger, and I are the operators of Villa Ranch and Mary K. Krueger Outfitting and members of Colorado Wild Public Lands, Inc. ("COWPL").

2. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would and could competently testify thereto under oath.

3. My wife and I have operated Villa Ranch for 12 years but it has been in our family for over 100 years. We have operated Mary K. Krueger Outfitting for 14 years. Villa Ranch is used for our cow and calf operation and Mary K. Krueger Outfitting supports our commercial hunting and recreation business.

4. We have a conservation easement on the Villa Ranch, which allows us to ensure that our ranch remains a working ranch. And as part of our cow and calf operation, we have been leasing the Vannoy Ranch, which is adjacent to parcel F-8, off and on for around six years. We

currently hold Grazing Permit No. 0502948 for Vannoy Ranch, which provides us access to the Goff Camp Gulch and Cave Gulch grazing allotments. Parcel F-8 lies within these grazing allotments.

5. If we can no longer use the public grazing allotments on parcel F-8 to graze our cattle, we will have to transport our cattle elsewhere to graze, which will result in approximately $2000-3,000 of out-of-pocket expenses, and additional time and resources that we must expend to travel farther to check on the cattle.

6. The Land Exchange will adversely impact our hunting and recreation business. Hunters choose Mary K. Krueger Outfitting for their hunting expeditions because our Special Recreation Permit allows us to access high-quality hunting lands for a remote hunt, most notably parcel F-5. However, as a result of the Land Exchange, we will be pushed off of this parcel to parcel B. Because parcel B is more accessible and BLM may allow road access through it, more hunters will be confined to a single, smaller area in the Windy Gulch Wilderness Study area where there is no water for the elk. Confining hunters to this smaller area will diminish our trademark hunting experience of covering many miles on foot to locate elk. The Land Exchange will also result in the general public having increased access to the land for hunting, which will drive away the elk population. If there are fewer elk to harvest, our clients are less likely return to and recommend Mary K. Krueger Outfitting. A loss of even 30% of our business would be devastating by resulting in a loss of approximately $56,000 annually.

7. I provided comments on the Land Exchange during the opportunity for public comments on the Preliminary Environmental Assessment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated October 10, 2023, in Rio Blanco, Meeker, Colorado.

DocuSigned by:
Albert Krueger
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Albert Krueger

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Declaration of Rick Tingle

I, Rick Tingle, declare as follows:

1. I am a resident of Meeker, Colorado. I am the owner of the Louisiana Purchase Ranch located in Meeker, Colorado and a member of Colorado Wild Public Lands, Inc. ("COWPL").

2. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would and could competently testify thereto under oath.

3. I have owned the Louisiana Purchase Ranch for 29 years. The Louisiana Purchase Ranch is used for hunting, baling hay, and grazing cattle.

4. The Louisiana Purchase Ranch is located adjacent to Parcel C-2 and has a Special Recreation Permit for Parcels C-1 and C-2—both of which are subject to the proposed Land Exchange. I access my Special Recreation Permit ("SRP") on Parcel C-1, via a road across C-2, for my hunting and grazing operations. Hunting operations support my Ranch from September to

December and grazing supports me from April to October. The Louisiana Purchase Ranch is also used for self-guided jeep tours, snowmobiling, and horseback rides throughout the year.

5. In November 2017, the Louisiana Purchase Ranch granted a 10-year SRP to Colorado Parks and Wildlife ("CPW") to allow public access to Parcel C-1. This access permit allows six hunters, each with up to two non-hunting companions, to access BLM lands for public hunting. The six hunters collectively have the right an annual harvest of six elk and mule deer, but not more than one antlered elk, one antlered mule deer, and two antlerless mule deer. The Louisiana Purchase Ranch and the nearby public parcels C-1 and C-2 are prime deer, elk, bear, and grouse habitat. Hunters are willing to put in the effort to hunt this country because it provides a once-in-a-lifetime hunting experience. Additionally, the public can access Parcel C-1 from the BLM to the north via the Pine Tree Gulch State Trust Land administered by CPW; Parcel C-1 is less than five miles from the Pine Creek Gulch access.

6. Parcel C-1 is particularly important to my business because it produces the most harvested animals per acre in the region for my clients and the general public. But without the road access via C-2, the remaining public lands near Parcel C-1 can only be accessed by foot. About half of my clients are older and cannot hike long distances to reach hunting sites, which means following the Land Exchange, I will lose approximately 50% of my clients as a result of this change alone. This extreme reduction in my client base will result in a substantial annual financial loss.

7. I provided comments on the Land Exchange, at both the scoping stage and during the opportunity for public comments on the Preliminary Environmental Assessment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated October Date 10/11, 2023, in MOFFAT COUNTY, MEEKER, CO.

DocuSigned by:
RICK TINGLE
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Rick Tingle

UNITED STATES DEPARTMENT OF THE INTERIOR
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Declaration of Bradley Bauer

I, Bradley Bauer, declare as follows:

1. I am a resident of Meeker, Colorado. I am a concerned citizen and a member of Colorado Wild Public Lands, Inc. ("COWPL") who uses land impacted by the Buffalo Horn Land Exchange for hunting and recreation.

2. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I would and could competently testify thereto under oath.

3. I have been using parcel F-5 for 12 years for hunting and recreation. I use the land nearly every September for archery season and sometimes also visit during the summer months to obtain data points on the elk. I also sometimes visit the parcel in the spring to hunt elk antler sheds.

4. Parcel F-5 consists of approximately 240 acres of prime animal habitat currently accessible via an over-the-counter (OTC) Game Management Unit (i.e., a tag you don't have to draw for) for elk hunting. OTC hunting ground like F-5 is rare in Northwest Colorado, even

more so when the habitat is rich enough to support an abundance of plants and non-game and game animals. This parcel of land in particular consists of a healthy mixture of native grasses, sage brush, serviceberry, mountain mahogany, pinyon pine, juniper, ponderosa pine, Douglas fir, aspens, and water. As a result, parcel F-5 supports a healthy population of elk, deer, bear, coyote, cougar, sage grouse, and several other species of mammals, birds, and reptiles, making it a prime hunting area for those who are motivated to access such country.

5. Elk movements are based on their access to water. What makes parcel F-5 so important for hunting is that it is one of the only places in the Strawberry Creek area that holds water, which attracts the elk. I can only recall two seasons of extreme drought when F-5 did not hold water.

6. Parcel F-5 is one of a very few areas in Northwest Colorado that reward motivated, OTC public land hunters with a quality, low-pressure elk hunt. This is a special place to hunt because there are few prepared and willing to tackle the rugged terrain to reach it. For those who are, the reward is immense. If the BLM were to exchange these parcels of land, the Gray Hills ridgeline would become the new public boundary and exclude the do-it-yourself, public-lands hunter from access to any game species below the ridge to the northwest.

7. It's hard to quantify what this land means to my family. I have been hunting this country for over a decade with my brother and my son; my son harvested his first bull here. My friends think I'm crazy for how hard I work to harvest elk, but it's the quality of the hunt that is so important. Not only is it important to me that I am able to harvest elk with my family and friends—usually my son and brother—but the quality of the hunt is our reward for going above and beyond what the typical hunter is willing to do to harvest elk.

8. If parcel F-5 is converted to private land, not only we will no longer be able to hunt there, because of the topography of and surrounding F-5, we cannot even logistically hunt on the public lands on the side of the hill because our access will be blocked by F-5's private status and unnavigable terrain. If the Land Exchange goes through, I will have to hunt elsewhere.

9. BLM claims that parcel B will provide increased hunter access. However, if the BLM provides vehicle access through parcel B, it will worsen rather than improve the situation for hunters like myself. The increase in human traffic will push the elk off parcel B, further up F-5 and deeper into Buffalo Horn private property where only Buffalo Horn clients will be able to harvest them.

10. I provided scoping comments on the Land Exchange during the opportunity for public comments.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated October 11, 2023, in Rio Blanco C, Meeker, CO.

DocuSigned by:
Bradley Bauer
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Bradley Bauer