

Court Invalidates Forest Service Policy of Withholding Land Exchange Appraisal Documents

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On Monday, the Federal District Court for the District of Columbia ruled that the U.S. Forest Service illegally withheld appraisal records for the Valle Seco Land Exchange from the public and relied on internal agency policies that violate the Freedom of Information Act (FOIA), a federal law enacted to ensure government transparency.

The court's decision responded to a September 23, 2022, lawsuit filed by Colorado Wild Public Lands, a nonprofit organization that advocates for public transparency in the federal land exchange process. The lawsuit alleged that the U.S. Forest Service illegally withheld records related to the Valle Seco Land Exchange, while releasing the same records to Wester Land Group, private consultants hired by the proponent to facilitate the land exchange.

Because land exchanges must be of equal value, releasing appraisals allows the public and NGOs to analyze and comment on land exchanges before the deals are finalized. Public scrutiny fosters more accountability among parties to the exchange. Yet the Forest Service routinely withholds valuation documents from the public until it is too late in the process for public input, while sharing these documents with non-agency parties, namely proponents and consultants.

In a sweeping victory for the public, the court sided with Colorado Wild Public Lands on nearly every substantive issue involving the illegal agency policy that thwarts FOIA requests by withholding these crucial documents. It also found that the Forest Service failed to justify heavy redactions in records it produced as part of the litigation. The decision is a clear rebuke of unlawful agency practices that run afoul of FOIA's mandate to ensure informed citizens through access to records from federal agencies.

"This is a huge win for us and for all public lands advocates; it will transform how agencies treat appraisals for proposed federal land exchanges going forward and ensure informed public engagement in the land exchange process," says Anne Rickenbaugh, Board member of Colorado Wild Public Lands.

"When the Forest Service sells or transfers public lands into private ownership, transparency and early public access to documents disclosing the values of each parcel is paramount," said Maya Kane, one of the attorneys representing Colorado Wild Public Lands. "For decades, the agency has kept appraisals and related records from the public, which has prevented organizations like Colorado Wild Public Lands from understanding whether an exchange is truly in the public interest. The failure of land management agencies to release pivotal documents in a timely manner prevents the public from meaningfully commenting on proposed exchanges."

Colorado Wild Public Lands, in partnership with the San Juan Citizens Alliance, has filed a separate lawsuit challenging the merits of the Valle Seco Land Exchange. That exchange was finalized in June 2022 and involved the transfer of 380 acres pristine lands out of public ownership to benefit the adjacent owner of the 3,100 acre Bootjack Ranch. "Based on this court ruling, the Forest

Service should rescind its approval of the Valle Seco exchange and give the public its rightful opportunity for meaningful involvement in the process,” stated Maya Kane.

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Background on Colorado Wild Public Lands’ Valle Seco Land Exchange FOIA Lawsuit

The Valle Seco Land Exchange, approved by the Forest Service on June 29, 2022, sanctioned the transfer of 380 acres of pristine, Wilderness-caliber lands in the National Forest System lands to private interests, including hundreds of acres of roadless lands and wild rivers adjacent to the South San Juan Wilderness. The land exchange increased private recreation opportunities for the private landowners, while removing public lands used for recreation along the San Juan River and Blanco Rivers. The pristine federal lands traded away in the exchange, including riparian and wetland areas, were conveyed to private ownership without protections to minimize or prevent development. In trade, the Forest Service acquired the Valle Seco land parcel – 880 acres of currently private land near Chromo, Colorado – which will be added to the National Forest System.

The Valle Seco land exchange serves principally to enlarge the expansive 3,100-acre Bootjack Ranch, owned by a Texas pipeline tycoon, Kelcy Warren. As documented in the Environmental Assessment released by the Agency under the National Environmental Policy Act (NEPA), Warren purchased the Valle Seco parcel and then threatened to fence the 880 acres, develop the land with a domestic elk farm and hunting lodge, and apply for year-round motorized and utility access if the Forest Service did not approve the land exchange.

Western Land Group specializes in land exchanges and was hired by Warren to promote the Valle Seco land exchange. Court filings in the FOIA case describe several land exchanges that have run into similar legal trouble due unlawful agency secrecy, including the land exchanges involving the proposed Wolf Creek Village. According to Forest Service documents, “Western Land Group, Inc. has been retained by the landowners to facilitate” another controversial land exchange near Yellowstone National Park known as the East Crazy Inspiration Divide Land Exchange.

Colorado Wild Public Lands closely tracked the Valle Seco Land Exchange and submitted a FOIA request, coinciding with the public comment period for the draft Environmental Assessment, on September 15, 2020, asking the Forest Service to release appraisals and related records, which the Forest Service denied. Agency records revealed that the appraisals requested by Colorado Wild Public Lands were completed in August 2020. The appraisals were shared with Western Land Group immediately upon completion; at the same time the agency denied FOIA requests submitted by the public to view them. The records were deliberately withheld until after Colorado Wild Public Lands filed its FOIA lawsuit, and even then, the records released by the agency were heavily redacted.

Implications of the FOIA Decision

The Court's decision in the FOIA case highlights flawed and unlawful agency practices that intentionally hide land exchange information from the public until the decisions are finalized. The decision is a clear rebuke of unlawful agency practices that run afoul of the FOIA's and NEPA's mandates to ensure informed citizens by protecting the public right to access records from federal agencies.

Land exchanges involving the Forest Service have frequently shielded appraisals and other land exchange records from the public, preventing the public from meaningfully commenting on the land exchange during the NEPA process. Appraisals effectively determine the legality and outcome of land exchanges, as they discuss specific values of the public and private lands in the land exchange and constitute indispensable information for the public to review, assess, and provide input to the agency on the merits and impacts of the proposed exchange. Without access to these critical records, the public cannot meaningfully engage in the NEPA process. Colorado Wild Public Lands, in partnership with the San Juan Citizens Alliance, has filed a separate lawsuit challenging the merits of the Valle Seco Land Exchange.