



Colorado Wild Public Lands

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October 3, 2020

Ms. Becca Smith
Pagosa Ranger District
PO Box 310
Pagosa Springs, CO 81147

VIA EMAIL: rebecca.smith@usda.gov

Dear Ms. Becca Smith,

Re: Valle Seco Land Exchange Draft Environmental Assessment Comments

The following are the comments of Colorado Wild Public Lands (COWPL) and Rocky Smith on the proposed Valle Seco Land Exchange, as described in the draft Environmental Assessment (EA). Colorado Wild Public Lands is a 501(c) 3 organization. Our mission is to protect the quality, size and integrity of Colorado's public lands, and our focus is advocating for the public in proposed land exchanges in our state.

We commend the Pagosa Ranger District of the San Juan National Forest for producing a clearly written document and maps. We have found the staff to be courteous and helpful. We would also like to express appreciation for the agency keeping an open mind, and responding to scoping comments by removing Parcel B and Parcel 10 from the proposed exchange. Colorado Wild Public Lands views this as an agency acting in the spirit of NEPA, to produce a fair analysis and be responsive to public input.

We incorporate by reference, the comment letter dated October 1, 2020, submitted by Rocky Smith and Colorado Wild Public Lands. Please note that COWPL submitted a FOIA request for further information on September 21, 2020. We are waiting for the requested documents in order to provide additional detail to our comments herein.

After reviewing the EA and related documents we would like to offer the following comments and identify that Alternative 1 – No Action, is the alternative that would best serve the public interest at this time.

I. THE PROPOSED LAND EXCHANGE IS NOT IN THE PUBLIC INTEREST

A land exchange may be completed only after it has been determined that the overall public interest would be well served (36 CFR 254.3(b)). When considering the public interest, the Responsible Official (Forest Supervisor) gives consideration to: 1) the opportunity to achieve better management of Federal lands and resources; 2) the needs of the state and local residents and their economies; 3) securing important resource management objectives including protection of fish and wildlife habitat, cultural resources, watersheds, wilderness and aesthetic values, enhancement of recreational opportunities and public access; 4) consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; 5) consolidation of split estates; 6) expansion of communities; 7) accommodation of existing or planned land use authorizations; 8) promotion of multiple-use values; 9) implementation of applicable Forest Land and Resource Management Plans; and 10) fulfillment of public needs (EA at 13-14).

(2) Findings. To determine that an exchange well serves the public interest, the authorized officer must find that -

- (i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and
- (ii) The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands (36 CFR 254.3(b)(2)).

Per COWPL's analysis, following, the proposed exchange would not meet the above criteria and would not be in the public interest.

The goals of better management of lands and of consolidation of lands would not be met. The acquisition of Parcel A would place an isolated non-Federal parcel into Federal ownership but the acquisition would be flawed if not all the mineral rights are acquired at the same time. The EA does not provide guarantee of the non-Federal party acquiring all the mineral estate.

The conveyance of most of the parcels proposed to be exchanged to non-Federal ownership, would create indentations in current Federal property boundaries and would not serve to consolidate lands or boundaries.

There are existing authorized and unauthorized uses on Parcels 1, 2, 5, 9 and 11 (EA at 98-99). The Forest Service would not be achieving better management by rewarding unauthorized uses through exchanging that land into non-Federal ownership.

A. PARCEL PROPOSED TO BE CONVEYED INTO FEDERAL OWNERSHIP

It would not be in the public interest to acquire Parcel A with the possibility that over 30 percent of the mineral rights remain in the ownership of other parties (EA at 85). The EA does not provide any guarantee of the non-Federal party acquiring all the mineral estate.

“All of the mineral estate owned by the non-Federal Party at the time of the exchange closing will be conveyed to the United States, along with the surface estate” [EA at 2].

This provides for the possibility of future extraction activities on Parcel A with no guarantee of the land’s protected status as undisturbed elk and mule deer habitat.

It would also not be in the public interest to acquire Parcel A for elk and deer habitat when approximately half the parcel will become part of an active grazing allotment and the other half will be put in a grazing allotment that may be activated in the future (EA at 58, 100).

The question of whether to provide public access along NFSR 653 in Parcel A, thereby increasing human impacts to the wildlife; but providing additional public use such as camping and hunting; or to close public access along NFSR 653 in Parcel A thereby providing better wildlife habitat, is tricky. If public access is provided it may in part (but not fully) offset access and recreational losses from the exchange of Federal Parcels to non-Federal, but it will not serve the objective of obtaining Parcel A for wildlife habitat. This again contributes to the ambiguity of whether acquiring Parcel A will actually meet the agency’s objectives and whether its value will exceed the loss of values in the parcels to be transferred out of Federal ownership.

B. ALTERNATIVE 2, 529-acre Parcel and ALTERNATIVES 3 & 4

The proposals for Alternative 2, 3 and 4, to extend the Colorado Roadless Area (CRA) Boundaries over existing Forest Service Land/s does not have a direct nexus to the land exchange (other than on Parcel A), since the Forest Service owns this land and therefore has the ability to designate these areas as CRA’s regardless of whether the land exchange occurs. If the Forest Service were to move forward with any of these proposed CRA boundary modifications, they would need to go through the process with the 90-day comment period. That would need to be accounted for as part of the EA analysis and comment period timeline. It could also affect the outcome – the Forest Service may decide not to proceed with the roadless area boundary modification, in which case, the public would not get what it was told. And it would be a flawed comment process if the outcome were pre-determined.

C. PARCELS PROPOSED TO BE CONVEYED OUT OF FEDERAL OWNERSHIP

It would not be in the public interest to lose the following parcels, as the resource values and the public objectives served by the non-Federal lands or interests to be acquired would not equal or

exceed the resource values and the public objectives served by the Federal lands to be conveyed. The valuable natural and cultural resources on the particular Federal parcels are unique to those parcels and/or especially valued in the San Juan National Forest. Certain parcels include additional protective designations; Colorado Roadless Areas and suitable wild and scenic river corridor. Also, certain parcels, especially 1, 3 and 7, are used for key public access and recreation. See further discussion regarding the specific parcels and their resources below.

PARCEL 1 -175.48 acres

The parcel is within the South San Juan Adjacent Colorado Roadless Area and contiguous with National Forest land. 5.7 acres are located in the East Fork of the San Juan River suitable wild and scenic river corridor. Thus, additional levels of protection exist on Parcel 1 indicating that it benefits from valuable public resources. The EA lists some of these per below.

- Parcel 1 has a “mixed conifer stand that is classified as old growth” [EA at 44].
- The parcel is located in migration corridors for elk and mule deer [EA at 55].
- Good habitat for American Marten, fringed myotis, hoary bat, flammulated owl, Lewis’ woodpecker, northern goshawk, olive sided flycatcher, and western bumblebee [EA at 64].
- 2.22 acres wetlands (1.45 acres PEM and 0.77 acres riparian land), 3 perennial creeks (2,797 linear feet of stream frontage – 1,973 of which on Johnny Creek [EA at 74]. These are natural wetlands that contribute to the integrity of the surrounding ecosystems.
- Cultural site eligible for NRHP listing [EA at 80].

The public has access to, and uses, Parcel 1.

- “Three hunting outfitter/guides are permitted to operate within the compartment that contains this parcel, and one outfitter occasionally uses the parcel area itself for his operations” [EA at 92].
- There are several public access points. One access is 0.3 miles cross country from East Fork Road (NFSR 667), including fording the river (EA at 4).

There are additional uses including three ditch headwaters, one authorized road and five unauthorized roads (EA at 87).

Based on the existing CRA and suitable wild and scenic designations, the presence of valuable resources, and existing public use, this parcel should remain in Federal ownership.

PARCEL 2 – 0.66 acres

This is a small area of land; however, it is within the Turkey Creek CRA, which ensures the integrity of that parcel and the parcel corner. Losing the protected 0.66 acres has the potential to lead to further development and impacts in close proximity to the CRA, especially since the parcel includes a “private road easement to Bootjack Ranch” [EA at 98]. The parcel includes habitat for fringed myotis, Lewis’ woodpecker, olive sided flycatcher and western bumblebee [EA at 64].

PARCEL 3- 16.4 acres

Parcel 3 is contiguous with National Forest land and adjacent to the San Juan River on the east side. The parcel has no improvements. There is direct public access from Highway 160; 0.17 miles along a path and then fording the river. This is also an important public access to the San Juan River. The parcel's southeast corner abuts a corner of the South San Juan Adjacent Colorado Roadless Area, creating a land connection and key linkage with the Turkey Creek CRA. This is the last public parcel along the Highway 160 corridor north of Pagosa Springs to Wolf Creek Pass. Hunting occurs on the property [EA at 92] and fishing occurs per public scoping comments. Other natural values include:

- There is habitat for the Forest sensitive species lesser yellow lady's slipper [EA at 48].
- Good habitat for fringed myotis, hoary bat, flammulated owl, northern goshawk, and olive sided flycatcher [EA at 64].
- 0.19 acres PEM wetland, 3.17 mapped floodplain acres, intermittent channel [EA at 75].
- Both the South San Juan Adjacent and Turkey Creek CRAs have scenic integrity objectives (SIO) of high or very high [EA at 36].

This is an important area of land in the National Forest. It is accessible to and used by the public, it has no improvements, and it includes special natural values. If it were conveyed to Bootjack Ranch, an important link in contiguous protected lands would be lost and a neighbor would lose their adjacency to public land and potentially some land value. There is the possibility of future development on the transferred land and adjacent lands impacting the parcel and the larger natural area, including the scenic integrity of the corridor.

In addition:

The United States acquired title to a 241-acre parcel of which Federal Parcel 3 is a part of from a private individual in 1932 as part of a land exchange. In the deed, the oil and gas rights were reserved (Feasibility Analysis (FA) at 5).

Given that the land was acquired by the Federal government in a land exchange it appears inappropriate to transfer the land out of Federal ownership in another land exchange.

If the Forest Service relied on the authority of the Weeks Act to obtain Parcel 3 by land exchange in 1932, then the Forest Service cannot trade that parcel as part of the Valle Seco exchange proposal. 16 USC s. 521 says that lands acquired under the Weeks Act "shall be permanently reserved, held, and administered as national forest lands".

PARCEL 4 – 80 acres

Parcel 4 has important wildlife habitat.

- There is a 19.9 acre stand of "old growth" conifer [EA at 44].
- There is habitat for lesser yellow lady's slipper [EA at 48].

It is used for recreation (although lightly, per the EA).

- Non- motorized access; big game hunting and hiking, hunting guides/outfitters all occur [EA at 92].

Parcels 4 and 5 serve as important buffer areas for proximate CRA's and Wilderness areas, and Parcel 4 has enough special resources to warrant keeping it in Federal ownership.

Conveyance of Parcel 4, per the land exchange proposal, would result in the proponent being able to connect their two private properties, whereas another private landowner would lose their direct access to public land and potentially some land value. There would be an overall loss of public access in this area plus reduced natural area connectivity. As shown on the Blanco Basin Area map (EA at 10), Parcels 4 and 5 extend the Forest Service land in two almost connecting fingers. Were those parcels to be exchanged into non-Federal ownership, the expanse of privately owned land would increase and the Forest Service land would be further reduced and separated.

PARCEL 5 – 33 acres.

- There is a cultural site on Parcel 5 significant enough to merit a boundary modification from the original proposal.
- There are two small PEM wetlands [EA at 44 and 75].
- Habitat for lesser yellow lady's slipper [EA at 48].

The EA proposes changing the boundaries of Parcel 5 to exclude the cultural site; however, isolated sites have also been located on Parcel 5, indicating that there is value to keeping Parcel 5 intact to protect the resources and their context. Parcels 4 and 5 serve as important buffer areas for proximate CRA's and the South San Juan Wilderness. Parcel 5 has enough special resources to warrant keeping it in Federal ownership.

PARCEL 6 - 20 acres

This parcel is small. It has a 0.1-acre wetland with diverse vegetation, including yellow orchid habitat. It is completely surrounded by private lands. Including it in an exchange makes sense provided the wetland and orchid habitat remain protected, e.g. through a conservation easement.

PARCEL 7 – 55 acres

Parcel 7 is a key parcel for public access to, and use of, the national forest. NFSR 660A provides access through the parcel. While NFSR 660 is located very close to the edge of the parcel. NFSR 668 is also a nearby access. The parcel provides access to Castle Creek and White Creek that both flow through it.

- The parcel and NFSR 660A are used for big game hunting, dispersed camping, fishing, hiking, biking, and winter sports [EA at 93].
- Several hunting and non-hunting outfitter/guides are permitted to operate within the compartment that contains Parcel 7. None of the non-hunting outfitter/guides conducts

activities within the parcel, but some day-use hunting outfitter/guides will occasionally use areas within the parcel” [EA at 93].

- There are at least four dispersed campsites on the parcel... users would have to travel several miles up the Castle Creek Road to find alternative dispersed campsites, and these sites are fewer in number and smaller in size” [EA at 96].

Parcel 7 also contains special resources:

- Riparian areas on Castle and White Creeks [EA at 45] 48 acres riparian [EA at 75], 1,413 linear feet stream frontage [EA at 75], and habitat for lesser yellow lady’s slipper [EA at 48].
- Cultural sites eligible for NRHP listing [EA at 80].

If Parcel 7 were to be taken out of Federal ownership, it would create an unusual “indent” or “cut-out” to the Forest boundary. For all the above reasons, especially the important natural and cultural values and public use, Parcel 7 should remain in Federal ownership.

PARCEL 8 – 3.5 acres

This parcel appears to be less critical for retention.

However, it provides big game hunting and hiking; also, several outfitters are permitted to use the parcel [EA at 93]. If Parcel 8 were to be taken out of Federal ownership, it would create a “cut-out” to the Forest boundary.

PARCEL 9 – 0.02 acres

This parcel appears to be less critical for retention.

PARCEL 11 – 68 acres

Parcel 11 has several significant and interesting resource values:

- 4.9 acre stand of “old growth” aspen, and 345.6 acres of “old growth” conifer (EA at 45).
- Perennial stream, two wet meadows and no noxious weeds [EA at 45]. Small acreage of low to moderate quality wetlands, including 200 linear feet Devil Creek [EA at 75].
- Habitat for lesser yellow lady’s slipper [EA at 48].
- Cultural sites [EA at 80].

Parcel 11 occupies a critical location as a buffer between the following Federally owned areas: adjacent Piedra Area (part of the National Wilderness Preservation System), the Piedra Area Adjacent CRA, and the Piedra Stock Driveway Trail; and the nearby non-Federal lands. Transfer of this parcel would also create a “cut-out” in the Federal land boundary. This is contrary to the Forest Service’s goal of “consolidation of lands” (EA at 13).

If this parcel were to be transferred to non-Federal ownership, the resources on the parcel would no longer be protected. Instead of having a natural area serving as a buffer between significant national forest lands and non-Federal lands, the potential for development and other man-made impacts affecting the significant Forest lands and user experiences on the trail, could increase. In addition, the parcel has special resource values. This parcel should remain in Federal ownership.

II. IMPROVEMENTS SUGGESTED FOR THE EA

A. COLORADO ROADLESS AREAS

Two of the parcels, Parcel 1 and Parcel 2, proposed to be exchanged from Federal to non-Federal, are currently designated Colorado Roadless Areas. The Forest Service is required to have a ninety-day comment period on proposed roadless area boundary changes. While this is a connected action, the implications of taking lands out of roadless area status and making them non-Federal has been addressed through a separate process. This proposed action should be more deeply considered in the EA as it is a connected action. Results from the Roadless Area scoping should be included in this EA. Per the website, 346 letters were received. Almost all the letters were AGAINST the proposal for removing the roadless designation.

B. THE EA IS INCONSISTENT IN THE WAY IT ADDRESSES FUTURE LAND USES

The EA addresses a potential future use of Parcel A under no action as a “hunting lodge and a fenced-in parcel” (EA at 22). The EA does not address under what authority the hunting lodge would be permitted and whether it would require review and approval from Archuleta County, with required standards for fire truck access, fire mitigation, road design, water supply, and sewer treatment. The Forest Service would likely not be required to provide further access to the parcel through ANILCA as there is an existing access, NFSR 653. Thus, it is unclear whether a “hunting lodge” would be constructed and used, and whether such is actually desired by the owners.

“(I)n September 2014, Bootjack Ranch, LLC purchased the Valle Seco property with the intent of including it in a land exchange with the Forest Service” (Feasibility Analysis at 1).

Given that possible future uses of Parcel A are included in the EA, it’s important to consider possible future uses of Parcels 1-9 and 11, should they become non-Federal parcels. The EA does not describe future development potential of the parcels once they become privately owned. Rather, it refers primarily to future use for hay and grazing, except for “a driveway may be constructed across Parcel 8 to provide access to one of the three designated building envelopes” and clearing deadfall (EA at 24). Regardless of how the current owners use the property, subsequent owners may have different plans, for example, they may develop to the build-out potential under county zoning.

Online research indicates that El Rancho Pinoso is part of the Lindner Ranches, which provide guided adventures including hunting, snowmobiling, horse riding, and fly-fishing.

The Lindner Ranches in southern Colorado are comprised of 3 high country working cattle ranches that also happen to be some of the best fly-fishing in the West: El Rancho Pinoso, Weminuche Valley Ranch and The Notch Ranch. These legendary ranches, located outside of Pagosa Springs, Colorado, have a combined 10 miles of private river running through the properties; all considered first class trout streams (<https://lindnerranches.com/#>).

They also offer accommodations and package deals. For example, 6 nights/5 days is listed at \$4,287 per person (<https://lindnerranches.com/wp-content/uploads/2020/01/erpRates2020.pdf>).

The Saddleback Ranch, owned by Bootjack Ranch, would be the beneficiary of Parcels 1 and 3, while the larger Bootjack Ranch would acquire Parcel 2. Bootjack Ranch extends into neighboring Mineral County.

Set at a base elevation of almost 8,000 feet about (sic) sea level, the Boot Jack features unmatched views of the San Juan Mountains, world class fly-fishing, and numerous improvements. The 3,151-acre tract is surrounded on three sides by the San Juan National Forest and Weminuche Wilderness and includes seven miles of the West Fork of the San Juan River and Wolf Creek. Two existing conservation easements total 1,322± acres. Six lakes and several ponds all connect to the San Juan. The main residence is a four-bedroom 13,825-square-foot sanctuary with countless amenities, including a library, two private offices, seven fireplaces, and a 1,500-bottle wine cellar. Four additional log cabins accommodate up to 18 guests. Structures on the ranch total 77,200 square feet.

One of the most important assets of the Boot Jack are its senior water rights of 103± CFS, which would yield approximately 70 million gallons per day when fully utilized. (<https://landreport.com/2010/04/sold-boot-jack-ranch-goes-for-47-million/>)

The above are just a couple of examples of the types and values of resorts, ranches and large land parcels in Archuleta County as well as commercial uses of private steam frontage and hunting access. We request that the Forest Service take this type of information into consideration when analyzing existing and future land values in the appraisals and also when reviewing how land uses on the proposed exchange parcels might change. Most of the parcels proposed for exchange would afford the beneficiary land owners one or more of the following: additional privacy, additional road access, direct control over ditches, further building development potential, further value in hunting and fishing access, and overall increased value to their existing properties.

C. CUMULATIVE IMPACTS

The Cumulative Impacts sections in the EA isolated the impacts to within the context of the proposed exchange. Larger scale cumulative impacts, including those of other land exchanges, or uses of Forest land, have not been addressed, for example cumulative loss of or removal of Colorado Roadless Areas, loss of floodplain, cultural sites, river frontage, and increased privatization of public land. Not only should the quantity or amount of resources be considered, but also the quality of the resources. This practice undermines the purpose of analyzing the cumulative impacts as it ignores the cumulative part of the impacts.

In other public land exchange projects that COWPL has reviewed, including Sutey-Two Shoes (Sutey), Blue Valley Ranch (BVR), Buffalo Horn (BH) and the Berlaimont Access Road, we have noted cumulative loss of *Penstemon Harringtonii* habitat (identified as a sensitive species), (Sutey, BVR and Berlaimont), loss of river frontage (Sutey, BVR and BH), and loss of wetlands with no mitigation (Sutey, BVR). These are examples of how among several projects, impacts to resources accumulate.

III. THE PROPOSAL FOR THE LAND EXCHANGE BY THE NON-FEDERAL PARTIES APPEARS MANIPULATIVE

The Feasibility Study states that Bootjack Ranch bought Parcel A with the intent of using it as an exchange parcel.

“However, in September 2014, Bootjack Ranch, LLC purchased the Valle Seco property with the intent of including it in a land exchange with the Forest Service” (Feasibility Analysis at 1).

Bootjack Ranch bought the property in 2014 and gated it, closing road access via NFSR 653. The previous owners would not sell to the USFS [EA at 30] but they did allow access on NFSR 653. Currently,

“The non-Federal Party has made the non-Federal Parcel A available to the Forest Service on the basis of exchange only” (EA at 30).

It appears that Bootjack Ranch is threatening the type of development that would most negatively affect the elk herd to heighten consternation amongst Colorado Parks and Wildlife.

Western Land Group is representing the private land owners who will be the beneficiaries of the exchange. In the last eight years, COWPL has analyzed several large land exchange proposals. At least two (Sutey and BVR) included Western Land Group as the private landowners’

representative. COWPL observed similar patterns in those proposals to the Valle Seco proposal, for example:

- A group of three or more private landowner beneficiaries is assembled and only one of those entities provides the parcel/s to be exchanged to the Federal party. The contract among the proponents is not disclosed to the public.
- The private proponent obtains a property that is desirable to the Federal Agency to exchange for the parcels that they and the other beneficiaries desire.
- The outcome of the exchange would be an expansion of the proponents' private land, increased direct private access to Federal land for the proponents, and reduced public access to Federal land.

IV. SCOPING AND PUBLIC COMMENT

There was an opportunity for the Forest Service to further publicize and inform people about the proposed exchange, for example, the BLM regularly provides helpful open house events in proposed land exchange projects. COWPL feels that starting the comment periods on the Friday before holiday weekends is intentional to minimize public engagement. All the documents cited and referenced in the EA should have been posted on the website at the time of release and all public comments regarding the proposed exchange should have remained on the website. (Most comments are available there now.)

An overwhelming majority of the public comments submitted during the initial scoping period voiced opposition to this exchange; the agency removed these comments from the website prior to the release of the draft EA and re-posted them at COWPL's request. The draft Environmental Assessment noted how many comments were submitted- 3,044, but included the text, "of these, 2,969 were form letters" [EA at19]. There is no reference to the total number of comments opposing the exchange and the total number supporting it, although we know from review, that the majority of the "form letters" were opposed to the proposed project.

Public comments should be considered in their entirety. Closer inspection of the "form letters" indicates that signees sometimes modified the content and/or added a personal message. A member of the public adding their name to a text should imply that the text reflects their opinions on the matter. The letter should be reviewed and considered, rather than dismissed out of hand. The exchange process is a dense one, and there are organizations willing to clarify that process and provide information to members of the public who perhaps don't have the experience or the time to navigate a lengthy Environmental Assessment document.

- A point repeatedly made in the scoping comments is that in 2013 the USFS committed to protect the South San Juan Adjacent Roadless Area and Turkey Creek Roadless Area for the public benefit [2013 San Juan Forest Plan]. The overwhelming majority of the public

comments reiterated this commitment, and people feel that this commitment is no longer being honored.

- Many of the public comments submitted since the release of the draft Environmental Assessment have called for a more thorough study of potential environmental impacts by way of an Environmental Impact Statement.
- Recent comments also overwhelmingly object to the disposal of wilderness quality roadless area lands and suggest that the best course of action would be for the Forest Service to buy Valle Seco outright using the Land and Water Conservation Fund.
- The majority of public input has stressed that cutting off the already limited San Juan River access upstream from Pagosa Springs would be a mistake.
- Public comments have also called for a more transparent process on behalf of the public interest, and cite Western Lands Group as an active advocate for the non-Federal proponents.

Public input throughout this process should be given the weight and consideration it deserves.

V. AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

A. CULTURAL RESOURCES

Table 15: Cultural Resources found within Federal Parcels, identifies 5 NRHP eligible sites and 9 isolated finds (EA at 80).

Parcels, 1, 5 and 7 include eligible sites, while Parcel 5 has four isolated finds as well. Given the amount of sites and finds on Parcel 5, it seems inappropriate to convey that parcel to non-Federal ownership. In addition, Parcel 1 has a historic habitation site (EA at 81).

Federal Parcel 11 is the only Federal or non-Federal parcel within the Brunot Agreement area... The Ute Mountain Ute and Southern Ute Indian Tribes have agreements with the State of Colorado recognizing their hunting and fishing rights within the Brunot Agreement area (EA at 80).

The EA proposes mitigation in the form of recording for several NRHP sites and proposes that the non-Federal owners would be advised on avoiding and monitoring the site(s) and a conservation easement would be placed on Parcel 11. "Brunot Agreement hunting and fishing rights would continue to exist on Parcel 11 even after it is conveyed into private ownership and the private landowner cannot restrict access to off-reservation rights" (EA at 81).

COWPL is concerned that the protection proposals per the EA will not be enforceable and there is no guarantee that non-Federal owners will protect the resources as well as they would be protected under Federal ownership. Plus, the resources would no longer be available to viewing by the public. Similarly, it would be better to keep the Brunot Agreement lands in Federal ownership for easier access to the lands by the Ute tribes.

The EA states that “[n]o cultural resource inventories have been completed for non-Federal Parcel A.” Id. at 79, 80. The Forest Service should conduct such surveys so that it and the public will know what cultural resources it would receive in the exchange.

B. GEOLOGY AND MINERAL RESOURCES

The document raises the management challenges of managing mineral leases and the dangers of split estates on the Federal lands. However, because the proponent does not own all the private mineral rights under Parcel A, the LEX would not change this. If the agency were to close the exchange prior to the acquisition of all the mineral rights under Parcel A, the public could wind up with a worse situation than the status quo. Overall, 30% of the mineral rights, (including all of the mineral rights under tract B – there are 3 tracts there) under A remain in 3rd party ownership [EA at 85].

C. ACCESS AND TRANSPORTATION

“Previous land owners have allowed access on the road through the private property for administrative and public use. However, in 2015 the current landowner locked the gate across the road at the northern property boundary. It has been closed and locked and the public has been denied access through the property to the NFS land south of the property since that time. The private landowner has operated motor vehicles and heavy equipment on the road through the private property as well as off-road on the private property. The landowner has also done some maintenance on the road through the private property” [EA at 86].

Prior to 2014, the previous owners allowed access through the property onto the Forest. Bootjack Ranch acquired the property with the intent of using it in an exchange with the Forest Service (FA at 1). It appears that Bootjack Ranch wanted to raise concern as they promptly gated the road and discontinued administrative and public access. They also operated vehicles and equipment on and off-road at the property. Bootjack Ranch appears to be holding the road hostage in order to force the Forest Service to approve a land exchange.

Per previous sections, it is unclear whether it is better to have public motorized access on NFSR 653 through Parcel A, providing access and recreation on Parcel A and on the parcel to the south, or whether it is better to limit access and enhance elk and deer habitat, and possibly increase the CRA. However, to fully realize the wildlife value of Parcel A, Road 653 would need to be closed to public use.

Among the Federal parcels to be exchanged, it appears that one administrative and public road would be lost; NFSR 660A. In addition, general non-motorized public access to adjacent Forest Service lands would be lost or reduced on all parcels other than 6. This would affect many current users and it is unclear whether enhanced road access will be provided on Parcel A.

Non-Federal Parcel A, proposed to be acquired does not include any creeks or land adjacent to creeks. Federal parcels: Parcel 1 includes portion of three creeks; Johnny Creek, Deer Creek and a tributary. Parcel 3 contains a portion of Johnny Creek. White Creek and Castle Creek converge on Parcel 7. Devils Creek crosses Parcel 11. Parcel 2 is 85 feet from the West Fork of the San Juan River. Parcel 3 boundaries are 100 feet east and south of the medial line of the San Juan River. Parcel 5 is 125 feet from the Blanco River (EA at 73-76). In sum, four parcels include creeks and an additional two parcels are close to rivers. There would be a net loss of river frontage and river access, as well as riparian vegetation, if the exchange proceeds.

D. RECREATION

With reference to NFSR 653 on Parcel A being closed by the current landowner:

This has resulted in ongoing dissatisfaction amongst many recreationists—mostly hunters—as evidenced by the numerous inquiries and complaints received annually by the Pagosa Ranger District about the loss of access on the road. However, the closure of the road has been viewed by some hunters as an improved condition for the relative seclusion it offers those able and willing to hike around the private land to access the NFS lands south of Parcel A (EA at 91).

The EA should document specifics of the types and amount of complaints, frequency and timing.

In reference to Parcel A becoming a non-Federal parcel:

“In sum, this alternative [2] will provide the public, especially hunters, with increased recreation opportunities and ease of access in areas that are either currently closed to the public or difficult to access. However, opportunities for relative seclusion will be diminished, and instances of perceived crowding are likely during the latter portion of the big game hunting seasons” [EA at 95].

The “increased recreation opportunities” do not replace the loss of river access for fishing or the sense of seclusion currently available on Federal parcels proposed to be conveyed.

Parcel 1 is mostly used for hunting, and some fishing. Three hunting outfitter/guides are permitted to operate within the compartment that contains this parcel, and one outfitter occasionally uses the parcel area itself for his operations (EA at 91). Parcel 3 - Three outfitter/guides are permitted to operate within the compartment that contains this parcel, but do not utilize the parcel itself for their operations due to the access difficulties (EA at 92). There is an old non-motorized path on Parcel 3. Parcel 4 includes hunting, cross country walking and hunting outfitter guides permitted to operate. Hunter/outfitter guides are permitted to operate on Parcel 5 as well. Parcel 7 has at least four dispersed campsites, hunting and fishing. The road on it is used for hiking, biking, skiing, snowshoeing. Various guides use the parcel. Parcel 8 has permitted outfitters and guides and is mostly used for

hunting and cross-country walking. Parcel 11 provides an important buffer for users of the Piedra Stock Driveway Trail and outfitter guides are permitted.

Per the above references to the EA, the described recreation opportunities would be lost, especially fishing and cross-country walking in easily reachable locations. The impacts from loss of Parcel 7 appear to be especially significant. It is not known whether hunting guides/outfitters would be permitted to use Parcel A.

VI. APPRAISALS AND VALUATION

A fair, proper and transparent valuation of the parcels in a proposed land exchange is crucial to a Public Interest Determination and yet the details of any valuation procedures, appraisal instructions or deliverables have not been made available to the public. See Appendix 1, attached and incorporated herein, for COWPL's comments regarding appraisals and valuation.

VII. ADDITIONAL COMMENTS NOT COVERED ABOVE

(1.5.1) FOREST PLAN DIRECTION

There are two desired conditions related to land adjustments. The first desired condition is that "surface and mineral ownership within the planning area is consolidated in order to meet resource and community needs and to facilitate efficient land management" (Forest Plan Desired Condition 2.18.2 at 141). The second desired condition is to retain and/or acquire "river frontage, riparian areas and wetland ecosystems, and other lands that would enhance or protect recreation, open space, scenery, clean air and water, and key habitat for species" (Desired Condition 2.18.3 at 141). Two guidelines are listed to meet the second desired condition. The first guideline (Guideline 2.18.16 at 142) "describes situations under which the SJNF should acquire or retain lands" [EA at 14].

The exchange does not result in a net gain of any of these criteria or net benefit to the public. There is no guarantee that the exchange will not result in a split mineral estate. It appears that the public would lose river frontage, riparian lands and wetlands. The public would lose river access (fishing and hunting) for vehicular access to upland game habitat (hunting).

"Forest Plan Guideline 2.18.16 describes various types of lands that should be acquired or retained, including lands that contain wetlands and/or floodplains and associated riparian ecosystems. Some of the parcels that could be disposed of as part of this land exchange proposal contain wetlands and/or floodplains and associated riparian ecosystems.

Guideline 2.18.17 identifies various items to be considered when conveying lands (this includes where exchange of lands brings into federal ownership higher critical resources or values). If alternatives 2, 3, or 4 are selected, the authorized officer must determine that the resource values

and the public objectives served by the non-Federal lands to be acquired equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed. “If an alternative is selected that would deviate from Guideline 2.18.16, or any other Forest Plan Guideline, the Responsible Official for the project decision must record the reasons for deviation and explain how the intent of the guideline is being met through alternative means. This would be addressed in the project decision notice and public interest determination” [EA at 18].

Have the above points been considered prior to or during this NEPA process? The document does not make this case, and it should.

“Chief of the Forest Service may modify the boundaries of any designated Colorado Roadless Area or add new Colorado Roadless Areas based on changed circumstances (36 CFR 294.47(a)). For this project, three changed circumstances have been identified: 1) the opportunity to conduct a land exchange to acquire critical winter range and a crucial migration corridor for elk and mule deer in the Valle Seco area; 2) the opportunity to acquire jurisdictional control over National Forest System Road 653 in the Valle Seco area; and 3) the closure of all or portions of three system roads (NFSR 653.C, NFSR 653.D and NFSR 619) in the Valle Seco area that have been decommissioned since the Colorado Roadless Rule has been in effect” [EA at 18].

This seems a self-serving argument. The land exchange does not alter the Forest Service’s ability to close and decommission roads under its jurisdiction; they have the discretion to do so at least every 10 years under their travel management process. The only changed circumstance here is the possibility of the land exchange and the incorrect assertion that the exchange presents an otherwise non-existent chance to close roads in the system seems like the agency is grasping for good reasons to do it.

The previously undertaken 90-day comment period on removing acreage from the South San Juan Adjacent and Turkey Creek roadless areas did not address the idea of adding non-connecting acreage to another CRA to make up for the loss. This should all be considered in a more comprehensive planning process.

CONSERVATION EASEMENTS

Since the EA proposes conservation easements as mitigation for certain environmental impacts, including privatizing land suitable for wild and scenic river corridor designation, it is necessary to examine the limitations of conservation easements. The most important point about conservation easements is that their certainty exists in theory, and may not always prevail in practice.

Theoretically, conservation easements provide permanent protection from any activities specifically identified within the easements. Specific objectives and careful crafting of an easement are important, as ambiguity can lead to contention over the intent of the easement; specificity is protection. It is not uncommon for landowners and Grantees to have different interpretations of the terms of an easement. The farther removed ownership becomes from the original Grantor, the wider this interpretation gap is likely to become, especially when easements are vague or silent.

Thus, the actual level of protections depends on several unpredictable factors such as the Grantee's abilities to monitor the property and identify changing conditions thereon, both parties' willingness to pursue mitigation if required, and the Grantee's willingness and resources to undertake enforcement as necessary. Currently, a lot of conserved lands are leaving the families that conserved them. This phenomenon is generating a lot of discussion among the conservation community about what types of and levels of resources will be necessary to counter anticipated legal challenges from new owners who are not familiar with or not philosophically aligned with the conservation easements.

A common misconception about conservation easements is that they remain constant; in fact, it is possible to amend an easement, if the Grantee is amenable to doing so. Fortunately, accredited land trusts do maintain a list of guidelines under which they will consider such action; but again, the less specific the guidelines, the more leeway for interpretation.

The discretionary aspect of amendment and enforcement leaves easements vulnerable to the human element. Unless there is clarity and awareness about, and willingness to, protect the original intent of the easement, the potential exists for permitted degradation of the resources the easement was crafted to protect. Another factor is most land trusts' dependence on private donations to sustain their mission. This dependence may put the Grantee in a position of having to choose whether to compromise on resource protection or risk foregoing a large and perhaps needed donation.

Ideally, these documents would have already been drafted and made available for public scrutiny. In the future, they would be placed in escrow at the release of a Record of Decision, pending completion of the land exchange.

VIII. CONCLUSION

Per the above, this proposed land exchange would not be in the public interest and the best alternative is Alternative 1 – No Action, at this time. If the Forest Service chooses to move forward, given the enormity of issues, the next step should be an Environmental Impact Statement that further addresses the concerns described herein and those described by other parties.

Thank you for your consideration of our comments.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "James".

James Katzenberger, Board Member
And the Board of Directors, Colorado Wild Public Lands

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APPENDIX 1 - APPRAISALS AND VALUATION

INTRODUCTION

A fair, proper and transparent valuation of the parcels in a proposed land exchange is crucial to a Public Interest Determination and yet the details of any valuation procedures, appraisal instructions or deliverables have not been made available to the public. Colorado Wild Public Lands (COWPL) submitted scoping comments on December 12th, 2019. These comments specifically requested information regarding the valuation and appraisal process.

The end of the original Agreement to Initiate (ATI) provides an apt “Notification Statement” (ATI at 2):

Public Availability of Property-Related Information. Any party who has signed below acknowledges receipt of this notification: All documents pertaining to both Federal and non-Federal lands necessary for the evaluation, processing and consummation of a land adjustment transaction, including but not limited to **appraisals**, timber cruises, specialist reports, geology/mineral report, title and other property information, are subject to public availability pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

(emphasis added)

Thankfully, many of these materials have been recently posted on the Forest Service (FS) project website for public scrutiny. Appraisals and supporting valuation documentation, despite their critical role in this land acquisition transaction, remain conspicuously absent. Alongside the draft Environmental Assessment (EA), appraisal instructions are a noted milestone prior to issuance of the draft Decision Notice (ATI at 9)

The appraisal instructions may have a significant impact upon any value conclusions for the Federal parcels. The instructions directing the treatment of the parcels will impact comparison selection and the appraisal analysis. COWPL requests disclosure of the appraisal instructions and that the following comments are considered in such.

The proposed exchange is a “value-for-value land exchange” (EA at 1) and yet the EA precludes discussion of parcel values by stating “the process to determine the values of the parcels is

separate from the NEPA process” [EA at 1]. The sizes, shapes, acreages, surface and mineral rights and precise locations of the exchange parcels – all characteristics which are relevant to the NEPA process – remain subject to appraisal and value equalization. Moreover, the Implementation Schedule provided in Exhibit C of the ATI (original ATI at 17, revised 1-2020 at 5), bundles the following into ACTION ITEM #40:

- NEPA document and supporting documents
- Draft decision
- **Appraisals and reviews**
- Draft exchange agreement
- Initial file material including Roadless Area modification

Modification #1 to the ATI was fully signed by the proponents on April 13th, 2020 and executed by the Forest Supervisor on May 5th, 2020¹. When examining the Implementation Schedule (revised Exhibit C, 1-2020), action items scheduled prior to April, 2020 are marked as completed, and the earliest next steps noted for April, 2020 and the following months. Action item #28 (Request Appraisals – target 4/2020) and #29 (Finalize Appraisals – target 6/2020), both logically precede action item #35 “Agreement on Values”. Notably, the ATI was further modified (Modification #2 of ATI), much in line with Exhibit E in the original ATI “Valuation Equalization” which makes specific reference to the potential removal of Parcel 11. This is precisely what occurs in modification #2 of the ATI, executed by the Acting Forest Service Supervisor on July 24th, 2020.

Needless to say, the above strongly suggests that Appraisal Instructions and perhaps appraisals themselves have been completed. And yet, this information remains unbundled from the materials already made available to the public during the EA comment period.

HOW WILL THE APPRAISALS ADDRESS THE UNCERTAINTIES DESCRIBED IN THE EA?

Since there is uncertainty over the mineral rights and the exact boundaries of some of the Federal parcels to be exchanged it seems premature to prepare the appraisal analysis.

Per the Feasibility Analysis (FA) dated 11/28/18, a “Valuation Consultation” was completed on June 27, 2017. An excerpt from the consultation document states

Based on the information provided, it appears this exchange is structured with enough flexibility to accommodate compliance with the equal value requirement of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.), as amended.

¹ Good documentation practices would stipulate that when an official provides signature approval *for* the original intended signee, in this case Kara Chadwick, that their name and role be clearly printed along with their signature “for”. In this case, the name of the individual Forest Service official who executed modification #1 of the ATI remains unknown due to their signature being illegible.

Due to the lack of specifics regarding the amount of the mineral estate underlying non-Federal parcel A that will be available to trade and the lack of specifics regarding restrictions in conservation easements proposed to encumber Federal Parcels 5, 6, and 10, it is strongly recommended that the Agreement to Initiate include systematic prioritized approaches to delete both Federal and non-Federal acres as needed to equalize values.

The FA goes on to state that this valuation statement was confirmed as “still valid” by Tate Curtis as of 11/2/18 (FA 29-30). This valuation statement, particularly in the absence of additional detail regarding Parcel A demonstrates an early and ongoing recognition that without a final determination regarding mineral rights, both the market and conservation value of Parcel A remain nebulous.

Proceeding with the EA under such uncertainty demonstrates a lack of prudence. Furthermore, attempting to finalize any descriptions of the properties involved in the exchange without disclosing any monetary figures, even estimates, suggests that doing so could expose fundamental flaws in the proposed “value-for-value” land exchange. And yet the ATI schedule referenced above in the Introduction suggests that appraisal requests, instructions, and valuation activities have occurred during 2020.

The Forest Service should wait until Bootjack Ranch, LLC (Bootjack Ranch) finishes acquiring the mineral rights on Parcel A before releasing the EA and beginning valuations. And the public should be exposed to the details in the value equalization and overall valuation process and documentation.

ACCESS

Appraisals for the private and the Federal lands should be treated similarly and consistently, particularly the question of access.

Although Federal parcels to be exchanged may have limited or no public motorized access, they do have legal and illegal access by the proponents/beneficiaries as well as other access opportunities through the proponents’ adjacent properties. This affects their assemblage value to the proponents. The public parcels increase in value and the proponents’ do too.

Comparable sales will likely support buyers’ willingness to acquire less easily accessible properties at market prices, for reason of privacy, air access or large land holdings. And the appraisals should not discount these sales.

DAMAGES

Damages resulting from loss of portions of land should be considered. This includes loss of value to remaining Federal parcels once portions that include values such as cultural sites, wild and scenic river designation or river frontage are removed.

Loss of value to adjacent private parcels other than those owned by the proponent when parcels are exchanged into non-Federal proponents; ownership, for example near Parcels 3 and 4, should be considered. The FA notes in reference to the land owner abutting Parcel 4 to the north that they “expressed concern that this land exchange will greatly reduce his property values.”, and that “it is anticipated that this landowner may continue to oppose the land exchange” (FA at 31). Was this included in the FA because the land owner took the initiative to “express concern” or has the Forest Service conducted a comprehensive assessment of how adjacent landowners (the public included) could be negatively impacted from a valuation perspective. Again, the expectation is that appraisal activities, instructions etc., would demonstrate such an assessment.

ELIMINATION OF MARKET COMPETITION

A land exchange eliminates market competition for the Federal lands by creating an opportunity for only one interest to benefit, unlike a sale which would be open for bidding to any interested party. In this exchange, there are two Federal parcels adjoined by owners other than the proponent; currently, these public lands offer amenities to these landowners who will no longer be able to enjoy them at will. It is reasonable to assume that they, and others, may have interest in purchasing these parcels, were they offered for competitive sale. But the exchange eliminates all potential competition and the accompanying market conditions affecting the value of the subject public lands.

CONSIDERATION OF BEFORE AND AFTER CONDITIONS

Consideration of before and after conditions will show that the exchange adds value to both the acquired public parcels and to the existing non-Federal parcels with which they are aggregated. Post-exchange, the proponents will acquire land with valuable resources including scenic and recreational characteristics. They will benefit from controlled and greater access to their existing land. Additionally, the aggregation of parcels enhances subdivision and development potential for the properties, thereby increasing the value of current and future non-Federal proponents’ holdings.

PARCEL A

Mineral Rights -The valuation of Parcel A is of particular interest as the proponents provide this as the sole offer of exchange. Nearly a third of this parcel appears to elude what the ATI describes as Bootjack Ranch’s continued commitment to a “diligent effort to secure additional mineral rights for conveyance to the Forest Service as part of the exchange” [ATI at 9].

The ATI goes on to require that among other things, Bootjack Ranch provide “a record of the communication and interaction with these mineral rights owners, and an explanation of why these mineral rights have not yet been acquired” [ATI at 9-10]. If Bootjack Ranch has provided such a

record, it stands to reason some part of the explanation would be included in the EA or otherwise provided for public review.

Nonetheless the outstanding mineral rights have not yet been acquired [EA at 85] and despite a considerable amount of time elapsed as attempts were presumably made for Bootjack Ranch to acquire the outstanding mineral rights under tracts A and B [EA at 85], they clearly have failed to do so.

If Parcel A is evaluated without 100% of the mineral rights to be conveyed into public ownership, it stands to reason that the value of this parcel would be significantly reduced. Thorough treatment of this topic should be reflected not only in the Appraisal Instructions, but as part of any discussion of the conservation value of Parcel A. Furthermore, tracts A, B, and C should be clearly marked on the maps included in the EA and provided on the project website <https://www.fs.usda.gov/project/?project=57154>.

Drying Up - Parcel A as described in the Wetland & Floodplain Assessment available for download from the project website cited above:

Parcel A contains ephemeral channels, intermittent channels, PEM wetlands, and PSS wetlands. There are no riparian areas on the parcel. In general, when comparing historic aerial photographs with current on-the-ground conditions, it appears overall that the parcel may be transitioning to drier conditions for unknown reasons. Some areas that appeared in historic photos to have saturated soils now support a vegetation cover composition primarily comprised of upland species or a mix of facultative upland² and upland species.

Given the above, especially when contrasted with the perennial streams and riparian areas described in the Federal parcels, this forms a concern for the future value of Parcel A land. The appraisals should reflect this as well.

Threats to develop a hunting lodge - It now appears to be part of the public record that Bootjack Ranch LLC asserts that in case this proposed land exchange does not proceed, Parcel A would be developed for a hunting lodge, elk farming, fences erected etc. Given the manner in which this future use is presented both in the FA, the EA and in the local press, it is fair to state that Bootjack Ranch, acting on their own behalf appears to be leveraging a threat against the Forest Service and other stakeholders, namely the public.

Consider the notion of a private land owner exercising this kind of leverage against a Federal agency, principally to expand already extensive land holdings of prime real estate. This forms an inherently problematic precedent for the forest service, a public agency, to set. And furthermore, in the context of valuation, was this potential use of Parcel A included in the value equation? It

should be – this aspect of the land exchange – is prescient for the local community, as seen in the local newspapers and scoping comments.

Additionally, the existing access to Parcel A should affect the appraised value. While the highest and best use could be development for a hunting lodge, the valuation should consider that the existing dirt road offering seasonal access is the only access on which development may currently rely, and such access will not support a year-round luxury development; moreover, power, water and other supporting infrastructure might be limited to *in situ*, off-grid resources as the Forest Service is under no obligation to allow utility easements and on-site water resources are an unknown. A seasonal rustic operation would be the only type of development that the current level of infrastructure will allow.

Access - With regard to NFSR 653, several of the alternatives propose restricting public access through Parcel A. A change in access conditions would affect the parcel's value. This needs to be considered in the appraisals.

VALUATION EQUALIZATION

Exhibit E – VALUATION EQUALIZATION in the original Agreement to Initiate (ATI) indicates that the only parcels under consideration in the context of value equalization were Parcels 5 and 11 [ATI at 20]. No explanation or justification is present for this, nor is any discussion provided pertaining to the other parcels included in the proposed exchange.

Parcel 5 boundary appears from maps attached to the original ATI and the EA to remain unchanged. However, it appears that the boundary of Parcel 5 is proposed to be changed.

To avoid and mitigate an adverse effect to a prehistoric artifact scatter in Parcel 5, the boundary of Parcel 5 will be modified to exclude the site. Therefore, the site will remain on Federally managed land (EA at 81).

Several entities are involved in the proposed land exchange. This alone should indicate a more complex assessment of value equalization than is offered in the Feasibility Analysis (FA) and ATI; since these documents did not provide a preliminary valuation, we cannot know what the starting point was and this undermines the credibility of the valuation process. The potential for valuation equalization to change or eliminate Federal parcels, makes it by definition, relevant to the EA. Adding to an already complex proposal, there is the proposed diffusion of the Federal parcels among several areas and property owners, and the value potential for resort style, Trophy ranch property increases. This is a nuanced proposal with a lot of detail – further information about valuation equalization should be provided for public review and comment.

FEDERAL PARCELS

Brunot Agreement - The Brunot Agreement on Parcel 11 requires that members of certain Ute tribes may continue to access and use the land whether it's in public or private ownership. The appraisal should address what is the impact of this on value considerations and does it constrain the type of development that may occur on the land?

Conservation Easements – A conservation easement has been proposed for Parcel 1. In the Feasibility Analysis, there was discussion regarding requiring conservation easements should there be more wetlands and floodplain areas in the Federal properties to be exchanged than in the non-Federal properties (FA at 21). It is critical to understand the extent of the conservation easements and their limitations on development for the valuations.

River Frontage - Access to rivers and river frontage greatly increase land values in the San Juans, see the extracts from websites under Bootjack Ranch and El Rancho Pinoso, below, that describe the value of resorts with hunting and fishing access, including private river frontage. In contrast to the Federal parcels, Parcel A does not have any rivers and the ponds and wet areas within it are manmade and currently drying up (see above).

Parcel Evaluation - Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11 are discussed below in their context as different areas: Bootjack Ranch (Parcels 1, 2, and 3), Rancho del Sol (Parcels 4, 5, and 6), El Rancho Pinoso (Parcels 7, 8, and 9), and Corral Mountain (Parcel 11). The appraisals should avoid using the Larger Parcel treatment for the parcels; the groupings should not be rolled together into four larger parcels, and the appraisals should absolutely not treat all ten parcels as a single one. These parcels have unique values and the appraisals should consider all of them.

BOOTJACK RANCH

Kelcy Warren, manager of Bootjack Ranch LLC, proposed to exchange land he already owns (Parcel A) for land that he does not (Parcels 1, 2, and 3). This forms the only clear value-for-value exchange between a non-Federal and Federal entity. Parcels 1, 2, and 3 together and separately possess important natural and real estate characteristics which should be considered in the value equation and reflected in the appraisal instructions and appraisals themselves.

Generally, these parcels would expand the already massive Bootjack Ranch which extends through Archuleta county several miles north into Mineral county. One website <http://www.mtnworkshop.com/bootjack-colorado> describes Bootjack Ranch:

the (sic) 3,151 acre ranch is a one-of-a-kind world-class family compound and retreat. Valued at 88 million dollars, the ranch is considered to be one of the finest and most beautiful recreation and fly-fishing ranches in the world.

These assertions, especially the valuation may be hyperbolic – but this strategic services study indicates that this ranch and others in the scenic San Juans, are valued highly as recreational and fly-fishing destinations.

Further, from <http://www.mtnworkshop.com/bootjack-colorado>:

International Alpine Design was retained by an interested investor in the ranch to provide strategic services focused on understanding the ranches future development opportunities and subsequent potential return on investment. IAD prepared several design alternatives for future development of the ranch that maximized the ROI while preserving over 1,300 acres in conservation easements.

What could a potential development opportunity look like when Parcels 1, 2, and 3 are assembled with the rest of Bootjack Ranch? The website above, shows a financial forecast for 35-acre homesites on Bootjack Ranch priced at \$5,000,000.

Based on County zoning, Bootjack Ranch could develop 35-acre homesites in Parcel 1 – the eastern boundary of which is less than half a mile away from designated wilderness and which extends 5.7 acres into a wild and scenic river corridor. The entire parcel is currently part of a roadless area. These attributes provide superior natural characteristics for Parcel 1.

In addition, there is mixed conifer forest, quaking aspens, relatively exclusive access to Deer Creek for fishing, the opportunity to spot foraging bald eagles, and this area is part of an important migration corridor for deer and elk that provides almost exclusive access to prime hunting along its eastern border.

Likewise, Parcel 3, once assembled into Bootjack Ranch’s other holdings could be combined into a 35-acre homesite on the West Fork of the San Juan river.

With respect to using Parcel 3 to access the vast Federal forests beyond Parcel 3 and do so directly from highway 160 access, the EA states (EA at 5):

There is no legal public access from the parcel to NFS land southeast of the parcel since corner to corner ownership does not convey legal access in Colorado. There are no improvements on the parcel.

The EA glosses over what could be a potentially major legal discussion here. Anecdotally, the question of corner to corner access appears less than black and white. For example, the blog article “Cornered: Western Sportsmen Trapped by Arcane Regulation Prohibiting Public Access at

Corner Crossings”² makes it clear that from a legal perspective this topic shouldn’t be dismissed out of hand, particularly in cases where vehicular access isn’t requested nor required.

Elsewhere in the EA (EA at 30), it is noted that:

The non-Federal Party has made the non-Federal Parcel A available to the Forest Service on the basis of exchange only and has no interest in conveying this parcel to the Forest Service through a direct sale. In addition, an exchange provides the Forest Service the opportunity to dispose of lands that are no longer in the public interest to retain.

The EA openly acknowledges that the “Forest Service has acquired critical non-Federal parcels through Congressional appropriation from the Land and Water Conservation Fund (LWCF).” (EA at 30), but provides no discussion of using this as a potential means to secure permanent access either through an easement or purchase of property adjacent to Parcel 3, or a small local land exchange with the land owner south of the Parcel 3. Not only would this significantly improve public access to public lands and designated wilderness beyond the Parcel 3 corner, it would add substantial benefit from forest management, conservation and recreation and hunting perspectives.

Hence there is inherent value in Parcel 3 as it stands, both in terms of investment potential, and as a natural resource, but we also see the potential future value to the public were the Forest Service to actively pursue forest access at this location, particular for the benefit of hunting and backcountry recreation. These considerations should be considered in the valuation process.

The valuation of Parcel 2 should take into consideration that once assembled into Bootjack’s adjacent property, the road on this parcel could be further developed into road access to the lands west of the river on adjacent parcel# 557901200001 (owned by Bootjack Ranch, LLC). This area has very desirable qualities: river access, adjacent national forest lands, amazing views, and opportunities to experience the best of the flora and fauna the Rocky Mountains offer.

The appraisal instructions should take these potential post assemblage opportunities for real estate development into account.

RANCHO DEL SOL

Parcels 4, 5, and 6, while not connected to each other, abut Rancho del Sol, property owned by the proponents David Skidmore and Cynthia Sites. The resulting assemblage, especially the connection between two previously disconnected areas afforded by Parcel 4, will significantly

² <https://www.outdoorlife.com/blogs/open-country/cornered-western-sportsmen-trapped-arcane-regulation-prohibiting-public-access/> (accessed on 10/1/2020).

increase the overall value of the Rancho del Sol property. The illegal road on a portion of Parcel 5 used by the non-Federal party (EA at 6) could present a hindrance for the proponent if required to pursue authorization, particularly because there isn't another way to access the structures on parcel # 588511400004 (owned by proponent David K Skidmore at site address *851 NOHUNTUM PL*)³

Hence the legitimization of this road adds potentially significant value to parcel# 588511400004.

Per the EA, the proponents for Parcels 4, 5, and 6 have not proposed contributing to the value exchange. COWPL has requested disclosure of agreements amongst the proponents via FOIA. This information, including agreements with Bootjack Ranch, is currently not available to the public. The public should have access to information on what should be a fair market transaction as well as a matter of public record; they also have a right to know that no single proponent is benefitting financially from the exchange transaction.

EL RANCHO PINOSO

Parcels 7, 8, and 9 abut El Rancho Pinoso, a working guest ranch owned by the Lindners, that for a fee, provides access to prime fishing. According to their 2020 rate sheet <https://lindnerranches.com/wp-content/uploads/2020/01/erpRates2020.pdf> two days of guided fishing, three nights stay, room and board with the 4 person minimum, would cost \$6,552 before taxes and other applicable fees. The per day fee for angling is \$500 for a single angler.

The EA does not describe future development potential of the parcels once they become privately owned. Rather, it refers primarily to future use for hay and grazing, except for "a driveway may be constructed across Parcel 8 to provide access to one of the three designated building envelopes" and clearing deadfall (EA at 24). Regardless of how the current owners use the property, subsequent owners may have different plans, for example, they may develop to the build-out potential under county zoning.

Moreover, Parcel 7 is perhaps the most valuable parcel in the entire exchange; it has ample public access, river frontage, adjacency to the national forest, and unique habitat. Compared acre to acre with Parcel A, it is much more valuable acreage. And while there exists a conservation easement directly to the north of Parcel 7, the potential to build out on Parcel 7 creates an astounding investment potential for the Lindner's to capitalize on the southern portion of their ranch.

And while they presumably raise cattle and cut hay, they also cater to upscale clients who can afford to spend thousands of dollars a day to access some of the best fishing on the West Fork of the San Juan.

³ Determined by an examination of GIS parcel data and satellite imagery from the Archuleta County Assessor's website, "<https://portico.mygisonline.com/html5/?viewer=archuletaco>", accessed 10/1/2020

RANCH PRESERVATION COMMUNITIES

Bootjack Ranch, El Rancho Pinoso, and to a lesser extent, Rancho del Sol could all benefit from a future “highest and best use” called a Ranch Preservation Community (RPC)⁴. 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 very large homesites are marketed for their privacy, exclusivity, natural beauty, recreational opportunities such as hunting, archaeological resources, biodiversity and contiguity to large blocks of public lands; all of the federal parcels in this land exchange benefit to some degree from all of these attributes, and assemblage of these parcels into the existing ranch properties adjacent to parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11 increases their individual value exponentially, especially when taken in light of RPC potential and the overall investment potential of the Trophy ranch concept.

CORRAL MOUNTAIN - PARCEL 11

Federal Parcel 11 is the only Federal or non-Federal parcel within the Brunot Agreement area... The Ute Mountain Ute and Southern Ute Indian Tribes have agreements with the State of Colorado recognizing their hunting and fishing rights within the Brunot Agreement area (EA at 80).

The EA proposes mitigation in the form of recording for several NRHP sites and proposes that the non-Federal owners would be advised on avoiding and monitoring the site(s) and a conservation easement would be placed on Parcel 11. “Brunot Agreement hunting and fishing rights would continue to exist on Parcel 11 even after it is conveyed into private ownership and the private landowner cannot restrict access to off-reservation rights” (EA at 81). The proposed limitations on use of Parcel 11 should be considered in the valuation.

Parcel 11 has several significant and interesting resource values including a 4.9 acre stand of “old growth” aspen, 345.6 acres of “old growth” conifer (EA at 45).and perennial stream, two wet meadows and no noxious weeds [EA at 45]. Parcel 11 occupies a critical location as a buffer between the following Federally owned areas: adjacent Piedra Area (part of the National Wilderness Preservation System), the Piedra Area Adjacent CRA, and the Piedra Stock Driveway Trail; and the nearby non-Federal lands. Thus, exchange of this land would provide a non-Federal party with unusual natural and wilderness resources and add to the value of the land.

Parcel 11 is in the Corral Mountain area and proposed to be exchanged to Double Springs Partnership.

⁴ Mundy, Bill. “Trophy Property Valuation: A Ranch Case Study”, Appraisal Journal, Jan. 1, 2003, p. 2.

LAND EXCHANGES ARE NOT VOLUNTARY TRANSACTIONS

A public/private land exchange is an atypical transaction between the federal government and a private entity, most often initiated by the private interest. The private entity acquires property that may be beneficial in public ownership and then offers it to the public in exchange for a property desired by the private entity with an implicit threat of adverse land use that encourages the federal agency to engage. Eliminating the possibility of the federal agency conveying adjacent public land to another private entity is a similar dynamic influencing the private entity's desire to solicit the exchange. And many of these exchanges are promoted by affluent, well connected interests that generate political pressure on the agencies to undertake lopsided exchanges. Exchanges are not voluntary transactions between a willing buyer and a willing seller; the public agency is frequently "outgunned" by the private interests involved and does not always behave like a willing seller.

END