



COLORADO WILD PUBLIC LANDS

June 6, 2018

BLM WRFO
Land Exchange Comments
220 East Market St
Meeker, CO 81641

Via e-mail: BLM_co_wrfo_bhlex@blm.gov

Dear BLM WRFO,

The following are the comments of Colorado Wild Public Lands on the proposed Buffalo Horn Land Exchange, as described in the environmental assessment (EA). We commend the White River Field Office for producing a clearly written, user-friendly document. (It should still be improved, as we advocate in section I below.) We have also found the field office staff to be courteous and helpful, despite an often stressful process. The information presented at the May 23 open house was helpful and staff presented it articulately. We thank them for pleasant and productive interactions. We would also like to express appreciation for the agency keeping an open mind, responding to scoping comments, and presenting two different Action Alternatives. Colorado Wild Public Lands views all of this as an agency acting in the spirit of NEPA, rather than just jumping through the hoops.

After reviewing the EA and other documents we would like to offer the following comments and suggest that Alternative C – No Action, is the alternative that would best serve the public interest.

I. IMPROVEMENTS NEEDED IN THE EA.

As good as it is generally, the EA does suffer from some incomplete analyses in the following areas, making it difficult to assess the full impact of the land exchange:

- The private parcels have not been surveyed for cultural or paleontological resources (EA at 73 and 75). As such we cannot assess the full impact of the exchange on the public's

interest in protecting these resources. We do know that the public parcels have both cultural and paleontological resources on them, but the EA does not offer any plans to mitigate for the loss of these parcels.

- While the EA does discuss the issue of grazing allotment reductions, it does not include quantification of the impacts for the smaller grazing allotments that could be affected. A reduction in AUMs for any of these allotments might be significant to the permittees' operation. The EA notes that AUM reductions could increase operating costs. *Id.* at 87.
- The EA states that the need for the land exchange includes "minimizing public trespass on adjacent private parcels" (EA at 2), yet there is no documentation at all of trespass incidence.
- A scoping comment submitted by the Wilderness Society and Conservation Colorado identifies parcel C1 as having "approximately 340 acres of the Danforth Hills lands with wilderness characteristics unit as identified by the BLM Little Snake Field Office" (WS/CC comments at 3); however, the EA makes no mention of this. It is also likely that Parcel F5, due to its contiguity with Windy Gap WSA does have Lands with Wilderness Characteristics; it has not been inventoried.
- The EA identifies both priority and general sage grouse habitat on Parcel G (EA at 11), yet there is no sage grouse habitat on private parcel B. The EA should address how it would mitigate for the loss of the habitat under Alternative B.
- The EA does not identify the private party proponent for this land exchange, that is, the owner(s) of Buffalo Horn Properties, LLC. Colorado Wild Public Lands has previously requested this information from the BLM, and subsequently included the request in our FOIA letter dated May 22, 2018. We believe that this information is essential to an open public process.

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

A. INTRODUCTION.

The governing statute for BLM land exchanges, the Federal Land Policy and Management Act, declares the following policy:

the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest.

43 U. S. C. 1701(a)(1). This act also states that the values of federal land to be traded away must not be more valuable than the lands to be acquired. 43 U. S. C. 1716. This is further detailed in BLM's land exchange regulations:

Determination of public interest. The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

43 CFR 2200.0-6(b).

It would clearly not be in the public interest for the BLM to acquire parcels A-3 and A-5 (alternative A). We also believe that there would be, on balance, a net loss in trading the BLM parcels proposed to acquire parcel B (alternative B). Our reasons for this are detailed in the remainder of these comments.

B. THE BLM SHOULD NOT ACQUIRE PARCELS A-3 AND A-5, THUS ALTERNATIVE A CANNOT BE APPROVED.

1. The public would have, at best, limited access to parcels A-3 and A-5. While there are arguably some benefits to acquiring parcel A-5, they, and any benefits from obtaining parcel A-3, would be greatly diminished, or in some cases negated altogether, by the Master Surface Use Agreement (MSUA) that covers both parcels. The EA states this directly:

In light of the current MSUA, and the uncertainty about what management authority/ability the agreement would or would not provide to the new land owner, it may be in the public's best interest to avoid acquisition of these parcels.

Id. at 29; emphasis added.

Note also that the MSUA states that the roads in these parcels are solely for use by the surface owner, and the energy company and its contractors. EA at 127. The MSUA:

in no way conveys rights of access to individuals or parties for any other purpose whatsoever. Hunting, sightseeing, horseback riding, use of recreational vehicles and other such activities are expressly forbidden.

EA p. 12; this is said to be a direct quote from the MSUA.

In other words, the public would not be able to use any of the roads in these parcels (except BLM road 1512 in parcel A-5), and might not even be able to use the parcels for any activity. But even if they could use the parcels, the presence of various energy-related operations would greatly reduce the value of these parcels for any form of recreation, including camping and hunting. Given the frequent human presence from the energy company's operations, the wildlife habitat on these parcels is likely ineffective, i.e., it can't be used by many species because of frequent, and often intensive, human disturbance.

2. Oil and gas leasing and subsequent development could occur on the acquired parcels. There is high potential for oil and gas on the private parcels, and A-5 has a current lease. EA at 39¹. Leasing and subsequent development could occur even on the portion of A-5 that is land with wilderness characteristics. EA at 64.

¹The information on current leases on the exchange parcels in the EA conflicts somewhat with that in the Feasibility Report. Compare EA at 39 with Feasibility Report at 2. The BLM needs to clarify this.

A-3 has been designated for an interstate oil-gas pipeline, a preferred route for a future pipeline. EA at 85. There is an easement/right of way for a pipeline on A-5. EA at 25.

Under alternative A, the BLM would have a net increase of 650 acres of split mineral estate lands. EA at 41. This would increase the difficulty of managing BLM lands in the WRFO area.

3. Sage grouse habitat to be acquired would not be effective, useful, or manageable. Sage grouse habitat is present on two of the private parcels to be acquired, including some priority habitat (almost all of parcel A-3 and over 1000 acres of A-5 – EA at 68). However, grouse “require large expanses of intact sagebrush habitat”. Ibid. With lots of human activity and many roads and oil-gas well pads present, the habitat would be ineffective and of little, if any, use to the species. Also, the understory on these parcels is “extremely likely” to be “dominated by cheatgrass and annual forbs which structurally provide insufficient cover for nesting grouse”. EA at 68.

But even if the habitat was of high quality and had little human disturbance, BLM probably could not apply stipulations (e. g., timing of operations, well locations) on oil-gas development because of MSUA. See EA at 25, 29, 69, 70. In other words, BLM could not apply measures that would sufficiently protect sage grouse, and the habitat would still be useless. Thus there would be little or no value in the agency acquiring the sage grouse habitat in these parcels. The EA even states this directly:

Due to the uncertainty at this time with what the MSUA would and would not provide the new land owner (BLM) in regards to management considerations for sage-grouse, it would be in the public’s best interest to avoid the acquisition of these parcels as the BLM may not have the ability to manage them in a way that would support the management decisions outlined in the 2015 GRSG RMPA.

EA at 70; emphasis added.

Under either action alternative, parcel G, which is said to have both priority and general sage grouse habitat (EA Table 1 at 11), would be traded to private. However, there is no discussion of parcel G’s sage grouse habitat in the EA’s section on sage grouse (id. at 68-70). Thus the public cannot discern how much sage grouse habitat of what quality would be traded to private ownership. Additionally, the EA does not discuss mitigation for loss of this habitat or methods of protecting it in private ownership (such as a conservation easement).

This would violate the NW Colorado Sage-Grouse Approved Resource Management Plan Amendment (ARMPA) of September, 2015:

Land Tenure Adjustment

MD LR-11: Retain public ownership of GRSG PHMA². Consider exceptions where:

It can be demonstrated that: 1) disposal of the lands, including land exchanges, will provide a net conservation gain to the GRSG; or 2) the disposal of the lands, including land exchanges, will have no direct or indirect adverse impact on GRSG conservation.

MD LR-12: (PHMA) In isolated federal parcels, only allow tract disposals that are beneficial or neutral to long-term management of GRSG populations.

MD LR-13: (GHMA²) For lands in GHMA that are identified for disposal, the BLM would only dispose of such lands consistent with the goals and objectives of this ARMPA, including, but not limited to, the ARMPA objective to maintain or increase GRSG abundance and distribution.

ARMPA at 2-22, 2-23.

4. Cultural resources might not be protected. Parcels A-3 and A-5 have not been surveyed for cultural resources³ (EA at 74), thus the BLM does not know what it would receive in return for exchanging parcels that have some cultural properties, including four that are eligible for the National Register of Historic Places. EA at 73-74. In general, the public interest is not served by disposing of lands with important cultural resources, at least not without enforceable conditions that would ensure their protection. Indeed, trading away cultural properties without legally enforceable stipulations to protect them would create a “finding of adverse impact”. EA at 74, citing 36 CFR 800.5(a)(2)(vii).⁴

² “GRSG” is greater sage grouse, “PHMA” is priority habitat management area, and “GHMA” is general habitat management area.

³ These surveys on private lands proposed for exchange should have been done before the EA was completed. Note that an agreement to initiate a land exchange, which in this case was signed December 1, 2016 (EA at 2), includes “[a] grant of permission by each party to conduct a physical examination of the lands offered by the other party”. 43 CFR 2201.1(c)(9).

⁴ The EA mis-cites this as “4 CFR 800.5(a)(2)(vii)”, but this is actually from Title 36, not Title 4, of the Code of Federal Regulations.

5. The proposed transfer of A-3 and A-5 would not ensure protection of paleontological resources. Parcel C-1, which would be traded away, has four scientifically important localities containing fossils. EA at 75. The private parcels have not been surveyed⁵. Ibid. Thus there could be a net loss of fossils in public ownership. In any case, the BLM has not yet determined how fossil resources traded to private ownership would be protected under alternative A as “the BLM is currently exploring options to obtain or protect the scientific data these localities would provide”. Ibid.

6. Important, even unique, vegetation communities would be exchanged for more common vegetation. The riparian area in C-1 (Price Creek) has a “relatively unique riparian plant community” (EA at 66), while the riparian area in A-3 (Deep Channel) has more common vegetation (Id. at 66), and is choked with weeds. Id. at 65. On the latter riparian area, “[t]his [riparian] system holds no unique values in terms of wildlife habitat to terrestrial animal species.” EA at 73.

The aspen community on parcel D-3, which would be traded away, is also unique. EA at 71. In general, the higher elevation areas that would be traded to private interests “are generally more intact, with a diverse, native understory” compared to the lower elevation parcels BLM would acquire. EA at 71. Under alternative A, the BLM and public would lose 2200 acres of the “higher elevation mixed mountain shrub community” (especially parcels C-1 and E-2) in return for 2900 acres of lower elevation pinyon-juniper and sagebrush communities. EA at 66.

7. The exchange would not benefit public big game hunting. Hunting is a major use of some of the BLM parcels proposed for exchange to private. EA at 33; see also the response to scoping comments. Alternative A severely curtails back-country hunting opportunities through the conveyance of C1, E2 and F5, with no comparable lands coming back to the public. The MSUA restrictions on access could eliminate hunting opportunities on or through the A parcels altogether. There is no habitat comparable to that of C1 on any of the private parcels due to the difference in elevation of C1 compared to the A and B parcels. The increased access to more public lands purported as the major benefit of Parcel B does not provide reciprocal hunting opportunities; there is no surface water on Parcel B, and Deep Creek Channel on A3 is described as holding “no unique values in terms of wildlife” (EA at 72).

The EA explicitly touts the high value hunting opportunities that the public parcels provide. The Socioeconomic analysis describes the SRPs on the public parcels as “located in areas highly valued by big game hunters” (EA at 58). In particular, C1, lost to the public under

⁵ As with cultural resources, these surveys should have been conducted on private land. See footnote 1 above.

both alternatives “does provide unique wildlife habitat as it supports a wooded riparian community that provides water, cover, and forage for many big game species,”(EA at 29); in other words, the big Elk like it here because it offers everything they need. The private parcels have little to no surface water, and offer none of the deciduous trees and shrubs that big game need for cover and forage.

The lands proposed for exchange lie within GMUs 11 and 211, “units known for their big game harvest numbers ... Licensed hunters hunt ... within these GMUs, and are known to pay thousands of dollars each year for multi-day trips on private lands. To earn supplemental income, some private landowners in these GMUs operate hunting lodges or lease portions of their land to outfitters [or run outfitting businesses themselves] who are able to charge a premium for guided trips . . . ” (EA at 50 and 51).

These high quality public hunting grounds provide a lot of income to local families. Action Alternatives A and B would adversely affect the outfitters who hold SRPs on the parcels to be conveyed, making Buffalo Horn a big winner in the competition for clients at the expense of three other permittees, Louisiana Purchase Ranch, Strawberry Creek Outfitters and Crawford Ranch; Crawford Ranch will also suffer from the reduced grazing allotments. The EA states “. . . loss of access to these areas could be perceived as adversely affecting the desirability of guide and outfitting services provided by these outfitters.” (EA 58)

Even if the BLM offered replacement lands for these SRPs, one of the biggest values in hiring an outfitter is the intimate connection they hold with their permit areas and the resulting knowledge of the game movements; it takes a long time to cultivate this and having to learn new terrain diminishes their value to their clients, at least temporarily.

Alternative B does retain some of the high quality hunting grounds on parcels E2 and F5 that Alternative A would trade away. However, Parcel B does not offer the same quality habitat and concentration of big game as the higher elevation public parcels in the exchange, and it does not mitigate for the economic loss to the SRP holders on those upland parcels. (See Section C below for more discussion about this.)

Additionally, the A parcels, would be constrained by the MSUA. Not being able to apply timing stipulations (i.e., to protect calving, fawning, migration, etc.) would hinder BLM’s ability to protect big game to the point where acquisition of parcels A-3 and A-5 would not be worthwhile, as the EA states:

Should the BLM not be able to apply management decisions outlined in the RMP, particularly in regards to oil and gas-related activities and ROWs, there

would be little opportunity to reduce impacts to big game and little incentive for the BLM to acquire these parcels.”

EA at 29; emphasis added.

Many of the parcels are said to have winter range for deer and or elk. EA Table 4 at 29. However, winter is a time when big game animals need to conserve their energy. With frequent human disturbance under the MSUA, the animals would be stressed or have to expend much energy to avoid the disturbance, thus the habitat would not be effective or usable.

Public access to A-3 and A-5 would at best be limited because of the MSUA, as is discussed in subsection B 1 above. But even assuming there was reasonable access to A-3 and A-5 once they were transferred to public ownership, the additional human use would displace the game and decrease the chances for hunter success and the overall hunting experience. The 648-acre portion of A-5 with wilderness characteristics:

is likely to be requested to provide outfitting and guiding services for big game hunting if it were to become BLM lands based on the use of the area by private land hunters and the use on the surrounding BLM lands.

Lands With Wilderness Characteristics: LEX Parcel A-5⁶, at 4. In other words, if there was access for big game hunting on parcels A-3 and/or A-5, the benefits of having BLM manage parcel A-5 would be mainly for hunters who hired an outfitter/guide, not for the general public.

8. Management of livestock grazing would be complicated by any exchange. There are numerous allotments and range improvements on the various parcels involved in the proposed exchange. See EA Tables 7 and 8 at 43-45. It is unclear how these would be managed if land ownership changed. For example:

It is unknown whether Buffalo Horn would choose to realign any allotment boundary fences to exclude their new private parcels.

EA at 46. See also EA at 59, which states that if Buffalo Horn LLC acquired parcel C-1, it might erect fences that would restrict movement of other permittees' cattle. As mentioned above the EA does not include any quantification of AUM reductions ensuing from the land exchange. These AUM reductions could have a negative impact on local livestock

⁶ This document appears on the website for the proposed land exchange.

operations which are an important part of the local economy and heritage. Moreover, reduction in grazing allotments has regional implications as the allotments are utilized by producers from as far away as Steamboat (Banning Angus).

While the BLM has suggested that there could be an increase in grazing opportunities in Upper Smith Gulch (see EA at 46), there is no certainty that BLM would include them in future management planning. Also, permittees would incur expenses to improve these new allotments with fences, water tanks, and the road maintenance necessary to build and maintain these improvements. Additionally, permittees would be responsible for managing the extensive noxious weed infestation on Parcel B (EA at 65), including scotch, musk and bull thistles, as well as houndstongue, all of which are inedible to cattle and so aggressive as to render infested areas inaccessible to any medium or large animals, resulting in useless rangeland.

9. Miscellaneous concerns.

--Parcel A-5 contains hazardous waste, including eight abandoned oil wells and an abandoned pipeline. Further investigation would be needed to determine clean-up actions. EA at 77. BLM would inherit a contaminated site that it would have to clean up if it acquired this parcel.

--Parcels A-3 and A-5 would not meet Public Land Health Standards 3 and 4. EA at 81.

C. THE BENEFITS OF ACQUIRING PARCEL B WOULD BE MINIMAL AND NEGATED BY TRADING AWAY VALUABLE LANDS

1. Increased public access could be detrimental to the resource. Acquiring parcel B is desired because it would provide access to two wilderness study areas that are currently difficult to access. But low public use now (because of difficult access) is good for maintaining wilderness character and effective wildlife and plant habitat. Increased public use if the parcel were managed by BLM could "disrupt and displace wildlife". EA at 29. Increased public use would also decrease hunting quality and the chance for hunting success, as is evidenced by various scoping comments.

2. The parcel could easily be leased and developed for oil and gas. Along with all the other proposed exchange parcels, parcel B has high potential for oil and gas. EA at 39. It would remain available for leasing. Id. at 16. In addition 48 percent of the parcel has private mineral estate. Id. at 39. Thus future leasing and development for oil and gas would be a persistent threat to public use of this parcel, or at least to the quality of any recreational experience.

Any oil-gas development would greatly reduce the quality of any recreational experience (hunting, hiking, wildlife viewing, etc.), including in the two wilderness study areas. Leasing and development would be facilitated by an existing easement/right of way for a pipeline on the parcel. EA at 25. Should development be proposed, BLM would not be able to control it on almost half of the parcel.

3. Parcel B has a lower quality vegetation community and less species diversity than the BLM parcels to be traded away. Parcel B has “extensive areas within Smith Gulch infested with Scotch thistle”. Increased public access means an increase in spread of weeds would be likely, and treating weeds on parcel B would be difficult without improving the road. EA at 65, 66.

The composition and quality of the vegetation on parcel B is less than that of the BLM parcels to be traded away:

Parcel B is composed largely of basin big sagebrush and greasewood bottoms surrounded by pinyon-juniper dominated ridges. These are probably the two most common and abundant habitat types in the WRFO. EA at 71.

The riparian area in C-1 (Price Creek), on the other hand, has a “relatively unique riparian plant community”. EA at 66. Parcel D3 has a “unique” Aspen community. EA at 71. The other public parcels also support habitat not present on Parcel B; “These higher elevation communities are generally more intact, with a diverse, native understory. We would expect the bird species associated with these communities to be represented at the appropriate densities throughout these 16 parcels.” EA at 71. So the BLM would give up a parcels with a “relatively unique” plant community and habitat supporting avian diversity for one that has very common vegetation and less species diversity.

4. Management of livestock grazing would be complicated by the proposed exchange. See discussion in subsection B 8 above.

5. Increased public access to, and use of, the parcel would increase the frequency of human-caused fire ignitions. There is strong evidence that areas with motorized access have a much larger number of fire starts.⁷ This issue is not addressed in the EA.

⁷ See, e. g., The Final Environmental Impact Statement for Roadless Area Conservation, Volume 1, at 3-104, 3-105. USDA Forest Service, 2000.

6. The benefits of obtaining parcel B, if any, would be minimal, and they would be negated by the loss of parcels C-1, D3 and F-5.

D. RETAIN PARCEL C-1

Parcel C-1 is proposed for exchange to private in both alternative A and B. The difficulty of public access (EA at 17) limits the use of this parcel, though it is adjacent to Buffalo Horn Ranch (ibid.).

Parcel C-1 has one of only two riparian areas among all the parcels in the proposed exchange. This is “a relatively unique” riparian plant community. EA at 71-72. Also, “this [riparian] system holds unique wildlife and riparian value”. EA at 72.

Parcel C-1 contains approximately 340 acres of the Danforth Hills lands with wilderness characteristics unit as identified by the BLM Little Snake Field Office. See scoping comments of The Wilderness Society and Conservation Colorado, dated January 23, 2017, at 2-3 and 5. See also Lands With Wilderness Characteristics: Polygon 042, BLM, June, 2013, and CON-010-042, which is a map of the Danforth parcel. Both are attached to these comments. The BLM must not exchange a parcel with wilderness characteristics, especially as proposed under alternative B, as it would not receive anything comparable in return.

Parcel C-1 has “four scientifically important [paleontological] localities” (EA at 75). It is not clear how, or even if, these important sites would be protected if the parcel is transferred to private ownership: “BLM is currently exploring options to obtain or protect the scientific data these localities would provide.” Ibid. Notably, surveys for paleontological resources were not conducted on private lands (ibid.; see discussion in subsection B 5 above), so the BLM does not know what it would receive in return for trading away a parcel with valuable fossil resources.

III. APPRAISAL/VALUATION

A. THE BLM HAS NOT PROVIDED CRITICALLY IMPORTANT INFORMATION ON APPRAISALS NEEDED TO DETERMINE WHETHER THE EXCHANGE IS IN THE PUBLIC INTEREST

At CWPL, we believe that proper and transparent valuation of the land exchanges is crucial to any Public Interest Determination. As such, we always request that appraisal information be available early in the process for public scrutiny. Generally, we find that others are requesting this information as well; in the instance of Buffalo Horn, there was

one other scoping comment raising the issue of valuations, and there have been others requesting the information in the context of the EA comment period. CWPL has submitted a FOIA request for:

- 1.) The April 2014 preliminary evaluation referred to in the Feasibility Analysis, as well as documents supporting this analysis;
- 2.) Appraisal instructions prepared by the Appraisal and Valuation Services Office, pursuant to the Agreement to Initiate;
- 3.) The actual appraisals undertaken or commissioned by the AVSO, when they are completed (please see comments below);

We do not anticipate receiving this information in time to include proper analysis by the closing date of this Buffalo Horn comment period, so we offer these comments and observations instead.

The staff of the WRFO has emphasized what an important role appraisals play in this exchange. The Feasibility Report says that the final exchange parcel configuration has not been offered for analysis in the Preliminary EA; “When the BLM receives the final appraisal, some non-Federal lands may be dropped from the exchange or be re-configured to equalize values.” (Feasibility Report at 4). Again, at the BLM open house on May 23, staff said it has not yet developed the “final exchange map” because they are anticipating having to re-arrange the parcel configuration due to differences in valuation.

Despite the requirement in Section 206 of FLPMA that appraisals be requested within 90 days of the completion of an Agreement to Initiate, which in the case of Buffalo Horn was completed in December of 2016, BLM tells us that the appraisals are not completed. Yet they know enough about the values of the lands in the proposal discussed in the EA to be able to say that the final proposal will be a different one.

Essentially, the agency’s reluctance to participate in an early and transparent appraisal process denies the public an opportunity to assess and comment on the exchange. The BLM itself is telling us that the proposal we are assessing and commenting on now, will not be what comes out in the Record of Decision. How can we determine whether the proposal is in the public interest if we do not even know what it is?

B. APPRAISALS SHOULD PROPERLY VALUE PUBLIC LANDS WITH REGARDS TO THEIR FULL USE POTENTIAL, RECREATIONAL BENEFITS, AND PUBLIC VALUES

1. Appraisal considerations for the small public parcels

The treatment of larger parcel identification and whether components of any contemplated exchange are valued separately as independent parcels or as a single tract to be sold in a single transaction depends upon the ATI or written instructions provided to the appraiser.

Therefore, the specific terms of the ATI or the written instructions provided to the appraiser can have profound impacts upon any conclusions of market value reached during such an assignment. The instructions dictate whether component properties of a contemplated exchange are considered separately and then totaled using a summation process, or valued together as one whole property. Bundling the smaller acreages into a single tract can influence the choice of comparable sales used to determine the market value of the smaller parcels by artificially creating a larger acreage with which to compare them. Appraisals should consider the inherent values of the individual properties, and the selected comparable sales should reflect these values.

2. Recreation and Assemblage as Highest and Best use of Larger Public Parcels

The Valuation Analysis in the Feasibility Report (p. 4) says the highest and best use the federal parcels is recreation for some parcels and assemblage with other acreage for others. We would like to suggest that the use potential for some of these parcels is not either/or, but rather both/and. In the area of the Buffalo Horn Ranch, a significant marketing factor is the appeal of big game hunting, and the quality of hunting on a given private parcel is a significant portion of that property's desirability. Parcels C1, D3 lie on the outside edges of the Buffalo Horn Ranch and are contiguous with both public and private land *not owned* by Buffalo Horn. These two parcels should be valued with the highest and best use being *both recreation and assemblage with other acreage*.

There is, according to an article in the Appraisal Journal, an unconventional highest and best use called a Ranch Preservation Community (RPC)⁸. 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; C1 benefits from all of these attributes, and D3 from most of them and the parcels' inclusion with the Buffalo Horn Ranch would imbue these now public parcels with all this potential, increasing their value exponentially.

3. Access

High quality big game hunting generally occurs in areas with the right elements of habitat (abundant forage, water and cover) and in areas that are remote. BLM Parcels C1 and, to a lesser extent D3 with its Aspen stands, benefit from these characteristics. And these

⁸ Mundy, Bill. "Trophy Property Valuation: A Ranch Case Study", Appraisal Journal, Jan. 1, 2003, p. 2.

characteristics are enhanced by the difficulty of public access to the area. As such, the BLM should not under-value these parcels due to lack of easy access.

Frequently, appraisal instructions require the appraiser to consider exchange parcels as not accessible. This might be accurate in the pre-exchange condition, but this consideration can artificially deflate value if the exchange itself makes the property accessible. Under UASFLA, the Highest and Best Use analysis requires detailed consideration of not only the present use of a property, but also any future potential uses. The 9th Circuit Court of Appeals affirmed this in a 2009 decision in which the court found that the BLM should have used the value supported by the proposed use rather than the use that preceded the action.⁹

Emphasis on motorized access improperly values parcel C1, D3, E2 and B. In the case of the public parcels, the highest and best uses include high value hunting, which benefits from a lack of easy access and assemblage with a larger, accessible acreage which then confers access to the previously inaccessible public parcels. In this context, lack of motorized access is a benefit to the present recreational value of the public parcels and a neutral value to their future use in assemblage.

Parcel B, which reportedly currently has superior vehicular access, will likely not be impacted significantly in terms of market value by the contemplated exchange. In fact, as its ownership will now be public, the market value of this property may be negatively impacted. While now in private ownership, this accessible parcel could theoretically be developed in some way for residential use; this will no longer be possible after the exchange. Making this private land public may either be neutral or negative in terms of the market value of this parcel.

Too much emphasis on motorized access undermines the influence of assemblage in valuing the parcels. Assemblage of C1 and D3 and E2 with private acreage not only increases the value of these parcels, but it increases the value of the now conjoined private property. Indeed, with hunting being such an important driver in the area real estate market, the RPC type large acreage/limited development appeal of the assemblage is likely much more valuable than the subdivision/single family development potential for a private parcel B, which has no private assemblage value.

4. Partial Acquisitions

⁹ National Parks Conservation Association v. Bureau of Land Management et al, Case Nos, 05-56814, -56815, -56843, -56832, -56908, Ninth Circuit, November 10, 2009, amended November 12, 2009.

When partial acquisitions of real property are involved, the UASFLA requires the consideration of potential damages and benefits to the remainder property. Parcels C1, D3, E2 and F5 are part of much larger blocks of BLM (public) lands; they are higher elevation parcels “with vegetation comprised of pinyon-juniper, deciduous mountain shrub, and to a lesser extent, Douglas Fir and Aspen communities,” EA at 65. The habitat on these parcels contributes significantly to the quality of the hunting on the big public blocks of which they are part. Conveying these parcels to a private interest diminishes the public values of the remainder blocks of public lands by removing the attributes (forage, cover and water on C1) of the public lands that make for good hunting.

These same attributes, when traded through the land exchange, greatly increase the quality and therefore value of the conjoined private hunting grounds; the exchange conveys access to and control of the habitat that big game find attractive. The exchange further increases the value of the private lands by combining the public acreage with already valuable larger acreage and providing motorized access to the formerly public parcels (assemblage). Thus the appraisals should consider not only the present monetized value of C1, D3, E2 and F5, but they should include the diminution of value on the remainder blocks of public lands, as well as the increase in value the exchange confers on the private property that is receiving the previously public benefits.

5. Additional Public Values should be considered

In addition to the recreational value of the upland public parcels, their habitat, especially the quality riparian area on C1, supports a diversity of species; this diversity is a benefit to the general public, not just to the human residents of the area. The EA notes: “The aspen (Parcel D3) and riparian (Parcel c1) communities in particular are unique in the respect that these ecosystems tend to support a rich array of migratory bird species including red-naped Sapsucker, purple martin and house wren. . . We would expect the bird species associated with these [upland] communities to be represented . . . throughout these 16 parcels”. (EA at 71). There are significant cultural and paleontological sites throughout the public parcels as well. None of these values are typically included in appraisals, as they are difficult to monetize; however, they contribute to the well-being of the local wildlife and to aesthetic value of these parcels and resulting user experience of those who venture on to them.

6. Exchange removes the effects of a competitive market on the public lands

When one considers both the benefits that Buffalo Horn would enjoy through the land exchange and the negative impact that removing these lands from public ownership could have on the hunting opportunities from neighboring lands, it is possible that neighboring property owners and hunting outfitters might find these public parcels attractive

acquisitions. However, conveyance of these properties through a land exchange by-passes any competition in the market by making this acquisition opportunity exclusive to the Buffalo Horn Ranch. Parcels C1 and D3 could benefit private interests other than the proponent if they were offered through sale, rather than exchange; however, both Parcels are Category II parcels, and not eligible for sale. Rather than creating an exclusive opportunity for one individual, the public interest might be better served by leaving these parcels in the public commons that currently benefits everyone.

C. APPRAISAL METHODS WILL IMPACT THE PUBLIC INTEREST DETERMINATION

Without consideration of all these factors, the appraisals will likely undervalue the public parcels. Valuing the small parcels by bundling them into a single big one has the potential to obscure the values of the individual parcels. The necessity of monetization through the appraisal process overlooks the cultural, paleontological and non-game wildlife values of the public parcels. Consideration of only one Highest and Best Use limits the full potential for value on the public parcels. And conveyance through land exchange removes the potential effects of competition on the value of the large public parcels.

The land exchange has potential to be a dis-service to the public, as it transfers public assets without making efforts to maximize the value the public receives in the transaction. As such, BLM should consider retaining the larger parcels in public ownership, because it does not have a tool with which to ensure the public receives proper value for the lands conveyed out of public ownership.

IV. PUBLIC INTEREST DETERMINATION

A. THE PUBLIC INTEREST IS NOT WELL SERVED BY THE CONVEYANCE OF PARCEL C1.

The parcel holds valuable riparian habitat, paleontological resources, and approximately 340 acres of the Danforth Hills Lands with Wilderness Characteristics as identified by the BLM Little Snake Field office.¹⁰ The public must not exchange a parcel with wilderness characteristics, especially as proposed under Alternative B, as it would not receive anything comparable in return. Additionally, the BLM has not presented a plan for protection of the paleontological resources, nor completed analysis on the private parcels necessary for the agency to know what, if any, resources the public would receive.

B. THE PUBLIC IS NOT SERVED BY THE CONVEYANCE OF PARCEL F5.

¹⁰ See scoping comments of the Wilderness Society and Conservation Colorado, dated Jan. 23, 2017 at pp. 2, 3 and 5. See also Lands With Wilderness Characteristics: Polygon 042, BLM, June, 2013, and CON-010-042 which is a map of the Danforth Parcel.

This Parcel is adjacent to the Windy Gulch WSA. Thus, it is reasonable to assume that the parcel may have wilderness characteristics.¹¹ See scoping comments of The Wilderness Society and Conservation Colorado, dated January 23, 2017 at 2-3 and 5. The BLM needs to do an inventory of the parcel's wilderness characteristics before it can be considered for exchange. This inventory is required by Section 201(a) of FLPMA (43 U.S.C 1711(a) and by the BLM's own policies:

Regardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands. Specifically, an update must be considered when "a project that may impact wilderness characteristics is undergoing NEPA analysis."

BLM Manual at 6301.06 A and A 4.

Thus, Parcel F5 must be inventoried for LWC, and the information disclosed to the public before it can become part of a land exchange.

C. ALTERNATIVE B IS PREFERABLE TO ALTERNATIVE A BUT IT DOES NOT ADDRESS ISSUES IDENTIFIED IN SCOPING

Alternative B does consolidate land ownership, simplify some management issues, and provide better access and resulting recreation opportunities to the BLM lands around the WSAs. However, when considering the public interest determination, there is tension between these public benefits and the area characteristics that local users value.

The scoping comments on the land exchange proposal overwhelmingly supported the status quo – Alternative C – "No Action". BLM says they field a lot of questions about access to the Windy Gulch WSA. However, not one comment requested or even supported the improved access to the public lands around the two WSA's provided through acquisition of Parcel B. Indeed, the majority of comments upheld the value of the effort required to enjoy the area's more difficult to access public lands. So, the question becomes, "What is the proper balance between serving the outside interest and serving the local needs?" The agency seems to be weighting the interest potential of users from outside the area over the needs and desires of area residents and user groups. This tension suggests that BLM should earnestly consider Alternative C – No action.

¹¹ Ibid.

V. CONSIDER OTHER ALTERNATIVES

One benefit of the alternative B would be that the BLM could consolidate its lands by disposing of small, isolated parcels. However, this could also be accomplished by sale of these parcels. Note that many of them are in Category I (EA at 3), under which parcels can be sold as well as exchanged. See White River Resource Management Plan at 2-52, 2-53. Another option would be for BLM to pull the C parcels out and proceed with the exchange for the smaller, scattered D, E, F and G parcels, with a conservation easement on the G parcel to ensure proper management for the sage grouse. This option would enhance recreation opportunities and management efficiencies, preserve the most desired hunting opportunities, reduce problems associated with changed grazing allotments, and eliminate most of the outstanding issues with archaeological resources and sage grouse habitat management.

Any action alternative should include conservation easements and/or deed restrictions to protect sage grouse habitat and cultural and paleontological resources.

CONCLUSION

The proposed land exchange is not in the public interest. It would require BLM to relinquish a parcel, C-1, with valuable ecological resources, but the agency would receive less valuable lands in return. Parcels A-3 and A-5, which the BLM would obtain under alternative A, are lands with common vegetation and are heavily infested with weeds. The exchange (under either EA alternative) would primarily benefit Buffalo Horn Ranch at the expense of the general public.

Because of the MSUA, access for public use might not be allowed, and would at best be limited. Parcel B, which the agency would obtain under both alternatives A and B, is encumbered with private minerals on almost half of its acreage, and both it and the portion with federal minerals could be leased and developed for oil and gas, negating the benefits of increased public access.

The sage grouse habitat on parcel A-5 is of little to no value to the species due to its condition. The MSUA would make it very difficult or impossible to manage this parcel to sufficiently protect sage grouse. Under alternative B, disposing of parcel G and getting no sage grouse habitat in return might violate the ARMPA, though information is lacking on the quantity and quality of sage grouse habitat on parcel B.

The exchange could result in a loss of cultural and paleontological resources, and also land with wilderness characteristics, all of which are valuable assets that need to remain in public ownership.

We recommend that BLM select alternative C, the no action alternative, for this project. To dispose of the small, isolated BLM parcels in order to consolidate land ownership, the BLM should look for a better exchange package under which the public would truly benefit, or sell the parcels to a private owner.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jean Perry', with a long horizontal flourish extending to the right.

Jean Perry

On behalf of The Colorado Wild Public Lands Board of Directors

EXHIBITS

- 1 Danforth LWC Polg 042 Report LSFO. This is a report on the lands with wilderness characteristics of land that includes part of parcel C-1.
- 2 Danforth LWC CON-010 042 Map. This is a map of the land evaluated in the Report.

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