



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Colorado River Valley Field Office  
2300 River Frontage Road  
Silt, CO 81652

# RESPONSE TO COMMENTS ENVIRONMENTAL ASSESSMENT for the Sutey Ranch Land Exchange



BLM-CO-040-2013-0061-EA  
COC-074812  
COC-076371

June 2014

## RESPONSE TO COMMENTS

The BLM announced the availability of the preliminary Environmental Assessment (EA) for the Sutey Ranch Land Exchange on April 29, 2013. The comment period on the EA extended through May 29, 2013, yielding 65 public and agency comment letters from a total of 55 commenters. Some individuals submitted more than one comment, while some comments were submitted on behalf of more than one unique commenter. Both oppositional and supportive comments were received; however, the majority of commenters (65 percent) were generally supportive of the proposed exchange.

All comment letters were reviewed for substantive comments, and contact information for each commenter was entered into a master database. These substantive comments provide the foundation for which this Response to Comments is based.

Depending on the resource or context, substantive comments were organized into 22 categories. Similar comments were combined to be representative of common themes that were expressed by numerous individuals. The most common topics/resources commented on were BLM Planning and Management (17 percent), Wildlife (14 percent), Conservation Easements (9 percent), Recreation (7 percent) and Access to Public Lands (7 percent). Comments that resulted in an update to a particular component of the analysis between the preliminary and final EA are indicated as such.

Names and affiliations of people who submitted comments on the preliminary EA are provided below.

First Name	Last Name	Organization
	A Carbondale Citizen	
Sandra	Aldersea	
Paul	Andersen	
Clark	Anderson	Sonoran Institute
C. Madison	Anderson	
Glenn	Auerbacher	
Dawn	Barton	
Patricia	Batchelder	
Tom	Cardamone	
Martha	Cochran	Aspen Valley Land Trust
Larry	Cohen	
Chuck	Downey	Crystal Valley Environmental Protection Association
Doris	Downey	
Davis	Farrar	Red Hill Council
Dorothea	Farris	
Franz	Froelicher	
Linda Singer	Froning	
Mark	Fuller	
Hawk	Greenway	

**Response to Comments**

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Bill	Hanks	
Chris	Harrison	
Connie	Harvey	
Kara	Heide	Eagle Valley Land Trust
Charles	Hopton	
Trési	Houpt	
Aaron	Humphrey	
Fred	Jarman	Garfield County Community Development Department
Ed	Jenkins	
Ryan	Kalamaya	
Patti	Kay-Clapper	
Karen	Kean-Hines	
Dave	Lipe	
Peter	Loram	
Delia	Malone	Crystal River Caucus
Johno	McBride	
John J.	McCormick	
Heidi	McGuire	
Robert F	McKenzie	
Ken	Neubecker	
Paul	Nieslanik	
Gaines	Norton	
Maggie	Pedersen	Roaring Fork Sierra Club Group
James	Peterson	
Julie Beck	Pope	
Mike	Pritchard	Roaring Fork Mountain Bike Association
Anne	Rickenbaugh	
Peter F.	Runyon	Eagle County Board of Commissioners
Laurie	Stevens	
Carl T.	Stude	
Tim	Sundquist	
James R.	Udall	Prince Creek Homeowner's Association
Ron	Velarde	Colorado Parks and Wildlife
Gloria	Wallace	
James A.	Wingers	
Mary Lou	Zordel	

## 1.0 RECREATION

**Paul Anderson**

**D-2**

**#1**

*Hunting is a long Colorado tradition that supports the Department of Wildlife. You are pushing all of the local hunters onto the Crown. We have hunted on the BLM parcel you are thinking of trading since I moved here in the 1970s.*

Response:

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels, including hunting, would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of hunters are specifically mentioned as a user group who would be impacted by the proposed land exchange. As the commenter has noted, hunting would still be provided on nearby BLM lands in the Crown. In addition, hunting and the leasing of hunting rights on Parcels A and B would be permitted under the conservation easements, and may include guided hunting for youth, veterans and disabled individuals per an agreement with CPW.

**Paul Anderson**

**D-2**

**#2**

*The population in the Roaring Fork Valley will increase dramatically in the near future. We need to retain public lands like this parcel and instead increase the portfolio.*

Response:

As discussed under the “Recreational Demand for Public Lands” heading of Chapter 3 Section C – Recreation, recreational demand for public lands is expected to increase throughout the CRVFO as the surrounding population continues to grow. In particular, a considerable and growing recreation demand is expected on BLM lands around and between communities in wildland-urban interface areas with trail/road networks and aesthetic amenities. While the Proposed Action would result in less land acreage managed by the BLM, and of public lands in general, the public would gain access to BLM lands with greater recreational opportunities and access, trail/road networks and aesthetic amenities, than those that are exchanged. The Non-Federal Parcels that would be incorporated into the CRVFO as a result of the land exchange are adjacent to highly popular recreation areas used by the community and could better accommodate future recreational demand than the difficult-to-access Federal Parcels currently managed by the BLM, despite fewer acres of public lands.

**James A. Wingers**

**D-10**

**#3**

*I am 68 years old and have trouble with steep terrain now. I enjoy a gentler access and the present BLM envelope provides. It seems to me that in this day of many young strong forest users, the BLM and the Forest Service has forgotten about us older geezers that can't walk that far any more. To access the north side of Sopris, I would have to start on the rocky scree field on the western flank and scramble through the scree field to the BLM/Forest above Mr. Wexners new parcel. This adds hours to the climb up the north flank.*

Response:

As discussed in Chapter 3 Section B – Access and Transportation, Parcel A does not currently provide public access for those wishing to climb Mt Sopris because the Parcel is bordered by private land to the north, east and west. The only legal public access to Parcel A is from the White River National Forest (“WRNF”) on the southern border of the Parcel, from which hikers would travel south to Mt. Sopris; not

north into Federal Parcel A. The primary legal public access to Mount Sopris is provided via the Mount Sopris Trail on the WRNF. Public access to Mount Sopris would not be affected by the Proposed Action. Public access to Mount Sopris is also provided off of Avalanche Creek Road.

**C. Madison Anderson**

**D-14**

**#4**

*Instead of giving them more land, we should be opening up the near-wilderness land that is already public to hikers and hunters.*

Response:

None of the Federal Parcels considered for exchange are designated Wilderness Areas, or have potential to become designated wilderness areas (Wilderness Study Areas or Roadless Areas). As discussed in Chapter 2 Section D – Alternatives and Concepts Considered but Eliminated from Detailed Analysis, alternatives that could potentially provide increased access to the Federal Parcels, such as an access easement across private lands, use of eminent domain or transfer to the WRNF, were not reasonable to analyze as they were beyond the scope of analysis and do not meet the Purpose and Need for Action. Additionally, the parcels are beyond the boundaries of the WRNF and the Forest has stated it has no intention of accepting management of the parcels in official comments submitted on the proposal. With respect to the use of eminent domain, this alternative is beyond the scope of analysis as the BLM does not have the authority to invoke eminent domain at the level of decision on this project.

**Anne Rickenbaugh**

**D-22**

**#5**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*The potential for damage from recreation such as hiking, biking, horse-back riding, and OHV use.*

Response:

As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the land trusts to preserve and protect the “Conservation Values” of the parcels in perpetuity. Private, low-impact recreational uses such as hiking, horseback riding, cross-country skiing, hunting, fishing and short-term camping would be permitted on the parcels, but must be conducted “in a manner not inconsistent with the preservation and protection of the Conservation Values.” These uses are allowed provided they do not impair the relatively natural habitat for native plants (including Harrington penstemon habitat), wildlife, or similar ecosystems within and upon the Parcels. The Proponents’ private use of vehicles off roads is permitted only in a manner that does not result in erosion of or significant compaction to the Parcels’ soils, harassment of wildlife, or damage to the natural vegetation, ecosystems or scenic values of the Parcels. Commercial or public use of vehicles off roads is prohibited on the Parcels, except for private or guided hunting purposes permitted by the Proponents.

Should the Proposed Action be approved, the Aspen Valley Land Trust (AVLT) and the Eagle Valley Land Trust (EVLT; collectively the “Trusts”) would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land’s physical condition at the time of the easement’s grant, as well as the nature and condition of the conservation values being protected. After the easement has been granted, the Trusts’ monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts’ Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts’ action depends on

many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability file a legal action if necessary.

**Anne Rickenbaugh**

**D-22**

**#6**

*The EA should acknowledge that the proposed action would result in a net loss of 2 square miles of public hunting opportunity for six species of high economic value: Elk, deer, grouse, turkey, bear and mountain lion.*

Response:

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels, including hunting, would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. The EA acknowledges that a limited number of hunters are a user group who would be impacted by the proposed land exchange. The BLM acknowledges that the species mentioned in this comment may be hunted on the Federal Parcels; however, the specific species that are hunted on the parcels is not considered necessary information for the public or the decision-maker to evaluate the proposal.

**Anne Rickenbaugh**

**D-22**

**#7**

*When the Proposed Action was being considered as a legislative exchange by Pitkin County, the Board of County Commissioners received several letters from people who use Parcel A. The scoping comments on the Proposed Action included numerous comments on the high values of the more remote aspects of the Parcel when compared to the reciprocal Parcel 1; these commenters cherish the quiet experience, the wildlife and the flowers they have enjoyed while hiking and hunting on the property. The Lion's Mane is a spectacular sight, and the views of Mount Sopris are incomparable.*

Response:

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of recreationalists who currently use the parcels are specifically mentioned as a user group who would be impacted by the proposed land exchange.

**Anne Rickenbaugh**

**D-22**

**#8**

*The Potato Bill drainage is unique. There were several comments that reminded us all of one of the reasons we live here: we enjoy the mere existence of these places that take a little more work to reach and the possibilities of exploration that they provide.*

Response:

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of recreationalists who currently use the parcels are specifically mentioned as a user group who would be impacted by the proposed land exchange.

**Anne Rickenbaugh**

**D-22**

**#9**

*Finally, the EA contains a lengthy discussion of the growing population in the area (EA at 3-33); if one considers public lands as a valuable asset to the future population of the valley, then more public land will be necessary, not less, as would result with the Proposed Action. These are the values that will be traded away with Parcel A.*

Response:

As discussed under the “Recreational Demand for Public Lands” heading of Chapter 3 Section C – Recreation, recreational demand for public lands is expected to increase throughout the CRVFO as the surrounding population continues to grow. In particular, a considerable and growing recreation demand is expected on BLM lands around and between communities in wildland-urban interface areas with trail/road networks and aesthetic amenities. While the Proposed Action would result in less land acreage managed by the BLM, and of public lands in general, the public would gain BLM lands with greater recreational opportunities and improved access, trail/road networks and aesthetic amenities, than those that are exchanged. The Non-Federal Parcels that would be incorporated into the CRVFO as a result of the land exchange are adjacent to highly popular recreation areas used by the community and could better accommodate future recreational demand than the difficult-to-access Federal Parcels currently managed by the BLM, despite fewer acres of public lands.

**Anne Rickenbaugh**

**D-22**

**#10**

*The EA is remiss for not discussing the history of Parcel 2. Somewhere around 2006 or '07, some local people cut “bandit” mountain bike trails on this private parcel, thereby creating an additional access point to the crown; this access is not an historic one.*

Response:

As discussed in Chapter 3 Section C – Recreation, user-created (bandit) trails that lead into The Crown trail network currently exist on Non-Federal Parcel 2. The BLM acknowledges that mountain biking has not always occurred on Parcel 2, however, the trails referenced by the commenter have evolved to become a popular access point to The Crown within the last decade.

**Anne Rickenbaugh**

**D-22**

**#11**

*The EA states that “Public use of Parcel A is relatively low given the difficult access and lack of trails and established recreation activities.” Ibid. The previously-quoted sentence describes an 18 mile network of roads and trails, and there is a well-established trail connection to the USFS lands.*

Response:

The routes mentioned by the commenter are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. (Note: motorized access to these routes requires crossing private lands owned by the Proponent, and using roads that are part of a private ranching system.) These routes are not part of the BLM’s travel management system open to public travel; however, if Parcel A is accessed by foot (the only legal public access to Parcel A is a circuitous, non-motorized route from the WRNF on the more remote southern border of the parcel, where the topography is steep and involves off-trail travel and the use of game trails and unsanctioned, user-created trails that are not part of the WRNF or CRVFO travel system) public use is limited to non-motorized and non-mechanized use. Although some user-created trails have been cleared and marked leading into Parcel A from the south in the WRNF, these trails are not part of the WRNF or CRVFO travel system and are not included in the WRNF or CRVFO Travel Management Plan which was developed through an extensive public input process.

The BLM has no official (i.e., part of the travel management system) existing or proposed roads or trails on Parcel A or within the vicinity. Although these private and user-created routes exist, public use of these parcels is relatively low.

**Anne Rickenbaugh**

**D-22**

**#12**

*Finally, since there is such a heavy emphasis on access and the recreational values the Proposed Action would provide, the document should contain a map of all the existing trails and trail connections in the analysis area, including the miles of roads and trails on Parcel A that is referenced on p. 3-9. This map would help to illustrate some of the recreational values being traded and offer valuable insight into how the Non Federal parcels could help to enhance those opportunities.*

Response:

As discussed in the Affected Environment of the Chapter 3 Section B – Access and Transportation, the routes on Parcel A mentioned by the commenter are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. These routes are not BLM travel management system routes open to public travel. Therefore, these routes have not been mapped by the BLM and cannot be adequately shown on a map in the EA. The EA thoroughly discusses existing trails and trail connections in the Analysis Area in Chapter 3 Section C – Recreation.

**Anne Rickenbaugh**

**D-22**

**#13**

*Several comments about the loss of public hunting were submitted, but this issue is not addressed in the EA.*

Response:

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels, including hunting, would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of hunters are specifically mentioned as a user group who would be impacted by the proposed land exchange

**Hawk Greenway**

**D-37**

**#14**

*Recreation itself only increases if one ignores that all the adjacent public lands to the non-federal parcels are currently accessible and near maximum carrying capacity for recreation. The only way they can enhance recreation is to consider the Crown as in-accessible. This is not the case, and were the proponents to close parcel 2, the Hanes parcel, to public access (the “trespass” cited as a public benefit to be cured by the exchange) the public would simply access the Crown at anyone of the multiple other public access points. Actually and in fact, Recreation itself also suffers a loss if this land exchange goes through. The fact that the parcel A is adjacent to millions of acres of National Forest and Wilderness lands means certain things are different on this land. For one thing, non-motorized access is the norm, and not unusual. Two, it is a part of a larger recreational landscape than mountain biking, and should be considered using that larger metric. Three, the very different nature of the landscape brings recreational diversity to the table, whether it be hiking, picnicking, skiing or snowshoeing in the winter, or birding along the miles of streamside habitat, it is the variety of options which add to the full range of recreational experiences available. One key word here is available. Any particular point in the Wilderness need not be easily available, or accessible to motorized users, to be a hugely valuable part of the recreational landscape. Parcel A is accessible, it would be lost to the public if exchanged. The crown is accessible, it would still be accessible if there were no exchange, so the value calculation is wrong as cited in this EA.*

Response:

As noted in Chapter 3 Section C – Recreation, the BLM maintains three access points and parking areas for The Crown along Prince Creek Road. These areas have limited parking and provide connections to existing routes in The Crown. The Crown can also be accessed from the east through routes such as the non-motorized, non-mechanized Nancy’s Path beginning at the corner of Emma Road and Hooks Lane in Basalt. The EA notes that although there other available access points to The Crown, Non-Federal Parcel 2 currently serves as a popular non-motorized public access point to The Crown through Prince Creek Road. This access point is popular because it is the first access point users come to from Highway 133 and because of the additional trail opportunities on Parcel 2 that connect to The Crown trails. The BLM analysis shows that acquisition of Parcel 2 would provide the opportunity for enhanced recreation options in the Crown area, possibly including a parking area to alleviate current road safety concerns.

With regard to Federal Parcel A, the BLM acknowledges that public lands with differing management prescriptions can provide a range of recreational opportunities, depending on allowed and prohibited uses. As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of recreationalists who currently use, or would use, the parcels are specifically mentioned as a user group who would be impacted by the proposed land exchange. Additionally, none of the Federal Parcels considered for exchange are considered Wilderness Areas, Wilderness Study Areas or Roadless Areas, which might be considered for Wilderness designation. The closest designated wilderness area, the Maroon Bells/Snowmass Wilderness, is approximately 1 mile south of Federal Parcel A.

**Glenn Auerbacher**

**D-38**

**#15**

*I've been hunting and camping on this beautiful hidden gem of public land for 25 years now. My 13 year old son camped and harvested a nice bull Elk in there last year and I a cow Elk. For the last 25 years we have filled our freezer with delicious Elk meat from this land. There is already many ranches and much private property in this valley, what good is adding to it. But lower elevation good public hunting land is rare and worth protecting! The private property they want to trade you is trashed and already being used and trespassed on by the public, the counties will end up with them anyway when the time is right. You're trading a hidden gem for a dog walk!*

Response:

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels, including hunting, would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of hunters are specifically mentioned as a user group who would be impacted by the proposed land exchange.

There are no plans for any of the Federal or Non-Federal Parcels to be transferred to any county in the Analysis Area. The existing condition of the Non-Federal Parcels is thoroughly documented throughout the EA.

**Mike Pritchard**

**D-53**

**#16**

**Roaring Fork Mountain Bike Association**

*We estimate that many thousands of recreationists use the trails on non-Federal parcel 2 each year, especially on weekends. Thus, we were very pleased when Two Shoes was able to acquire the land and include it in the Sutey Ranch exchange. Conveying non-Federal parcel 2 to BLM in the exchange will permanently legalize public use of the parcel and its trail network by mountain bikers and hikers.*

Response:

Comment noted. The Land Exchange decision does not formally address resource management and public use (mountain biking and hiking, etc.) of the parcels the BLM would acquire. Should the Land Exchange be approved, a separate Environmental Assessment and site-specific management plan would be developed with public involvement to address resource management and public use.

**Mike Pritchard****D-53****#17****Roaring Fork Mountain Bike Association**

*Equally important is the BLM acquisition of the 557 acre Sutey Ranch adjacent to BLM's Red Hill Special Recreation Management Area (SRMA), Existing mountain bike trails in the northern portion of the SRMA come within yards of the Sutey Ranch boundary, and it would require little new trail work to link into a wildlife sensitive trail through Sutey to County Road 112. Once at CR 112, it is then less than a mile ride on CR 112 until you reach BLM's trails in the Fisher Creek area. (BLM may wish to mention the Fisher Creek connection opportunity if an amended EA is published). Accordingly, if the exchange is completed, there will be an opportunity for mountain bikers to access the Red Hill SRMA at the Carbondale stoplight on Highway 82 and continue on BLM land all the way to Fisher Creek, except for the 1 mile stretch of travel on CR 112. Once again, this will be a huge improvement over the status quo/"no action" alternative discussed in the EA...not to mention the opportunity for a loop trail on Sutey Ranch.*

Response:

Comment noted.

**3.0 WATER****Carl T. Stude****D-13****#18**

*In planning for the future management of Sutey Ranch, consideration should be given to using less water for irrigation and selling a portion of the water rights to downstream users, such that more flow would remain in Cattle Creek. It might also be modified to improve fish habitat, such as by constructing underwater weirs of boulders to create pools.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels (Sutey Ranch and West Crown) would be determined in a future, site-specific management plan. This plan, and its implementation, would be funded by the \$1.1 million cash donation from the Proponents. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and Colorado Parks and Wildlife (CPW), would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Anne Rickenbaugh****D-22****#19**

*On parcel A, “Potato Bill Creek is 2,817 linear feet. Off parcel A it is another 2/3 mile which is vulnerable to water uses exempted see section IV – conservation easement IV.*

Response:

As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the Trusts to preserve and protect the “Conservation Values” of the parcels, including water quality, in perpetuity. Any permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values. It is important to note that water quality is not limited to the stream segments within Federal Parcel A and that by protecting water quality from impacts generated on the parcel, water quality downstream from the parcel would also be protected.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#20**

*Water rights: attention to the scoping comments shows that this issue is mis-characterized; none of the scoping comments identified the transfer of ownership as an issue, but several comments did express concern about the future management of the water rights and the potential change in use.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan.

The transfer of ownership of water rights is analyzed as required by NEPA as a direct effect. The public will have another opportunity to comment on the use of the water rights in the NEPA and public participation processes for the site-specific management plan.

**Anne Rickenbaugh**

**D-22**

**#21**

*With the exchange, the BLM would lose any currently held ability to defend the quality of wetlands habitat, riparian habitat, and water quality on the federal parcels. Because the conservation easements envisioned for the federal parcels do not address water rights, any changes in diversion points or changes in use of proponent-owned water rights downstream (hydropower rights are retained in the conservation easements) could impact the habitat on the federal parcels, without any recourse allowed under the CEs. See section IV of these comments – Conservation Easements.*

Response:

As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the Trusts to preserve and protect the “Conservation Values” of the parcels, including water quality, in perpetuity. Provisions for alternative energy generation are common in conservation easements and the conservation easement for Parcel A allows for micro-hydro electric development in the Thomas Creek watershed only, in accordance with all applicable laws and upon prior notice to the Trust, as a

permitted use. Any permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values. These uses are allowed provided they do not impair the relatively natural habitat for native plants (including Harrington penstemon habitat), wildlife, or similar ecosystems within and upon the Parcels.

The conservation easements do provide recourse for impacts to the quality of wetlands habitat, riparian habitat and water quality on the Federal Parcels. As noted in Appendix A, the Trust would thoroughly inspect the Parcels at least once a year to monitor compliance with, and otherwise enforce the terms of, the conservation easement. The easements also require the Proponents to manage big game, habitat and vegetation on the Parcels according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.” Beyond the conservation easements, local, state, and federal agencies have developed landowner assistance programs, regulations, and ordinances that further protect and enhance wetland and riparian resources on private land. For examples, see Section 404 of the Clean Water Act; Pitkin County Land Use Code, Chapter 1: General Provisions, 1-60-280: Water Resources and Aquatic/Riparian/Wetland Areas; and the Colorado Wetlands for Wildlife Program.

**Mark Fuller**

**D-28**

**#22**

*We would encourage the BLM to utilize the 2.25 cfs of water rights which will accompany the Sutey Ranch conveyance to augment streamflow in Cattle Creek, which lies only about 1/2 mile north of Sutey. This will help restore a healthy stream environment in that area.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Ron Velarde**

**D-31**

**#23**

**Colorado Parks and Wildlife**

*Any water rights that are acquired with the Sutey Ranch should be utilized for the benefit of wildlife and wildlife habitat.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage, among

others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, CPW would be asked to participate in the development of the management plan, including the use of water rights.

**Hawk Greenway**

**D-37**

**#24**

*Page A4 summarizes the CE and allows Micro hydro development on Thomas Creek, along with ditches, ponds, erosion catchments, and so on. All of this would not be a threat if the land continued in public ownership, or would at least require court adjudication. The natural conditions could be compromised.*

Response:

As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the Trusts to preserve and protect the “Conservation Values” of the parcels, including water quality, in perpetuity. Provisions for alternative energy generation are common in conservation easements and the conservation easement for Parcel A allows for micro-hydro-electric development in the Thomas Creek watershed only as a permitted use. The construction, installation, maintenance, improvement and replacement of ponds, wetlands, and irrigation structures (including ditches, pipelines, headgates and related equipment) are also permitted for agricultural purposes or the enhancement of wildlife habitat. Any permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values. These uses are allowed provided they do not impair the relatively natural habitat for native plants (including Harrington penstemon habitat), wildlife, or similar ecosystems within and upon the Parcels. In addition, these uses may be permitted only when in accordance with all applicable laws and upon prior notice to the Trust.

**Hawk Greenway**

**D-37**

**#25**

*Page 3-181 They count the Sutey as 112 acres of prime farmland if irrigated, yet cite that they will use the water to enhance the streamflow in cattle creek, de-watering the irrigated lands they have traded for.*

Response:

The EA does note that the water rights would provide the BLM with options to enhance water dependent natural resource values and riparian habitat along Cattle Creek, but the final use of the rights would be analyzed and decided upon in a future site-specific management plan.

**Hawk Greenway**

**D-37**

**#26**

*There is no riparian zone on the non-federal trade parcels, None. They stretch a roadside ephemeral ditch into .08 tenths of an acre of riparian habitat on the sutey, and identify one stomped out spring as trade for 16.6 acres of riparian habitat...*

Response:

As noted in Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones, Non-Federal Parcel 1 contains riparian/wetland habitat along a tributary to Cattle Creek, which is partially fed by a spring or flowing seep in the pasture to the south. The riparian habitat along the ephemeral stream channel supports junipers and pinyon pine, Gambel oak, snowberry, serviceberry, chokecherry, and a few broadleaf cattails in the channel bottom. Canada thistle is also present. This riparian/wetland habitat covers approximately 0.18 acre, including an estimated 0.02 acre of potential wetlands. In addition, there are three stock ponds which are seasonal aquatic sites surrounded by crested wheatgrass (*Agropyron cristatum*) and other

upland pasture grasses. The maximum water surface of these three stock ponds is estimated to cover approximately 0.2 acre. Wetlands on Non-Federal Parcel 2 are limited to the banks of the Prince Ditch. The riparian/wetland habitat is estimated to cover 0.6 acre; wetlands potentially account for 0.06 acre of this area.

The proposed exchange would result in a reduction of riparian/wetland habitats, streams, and potential wetland areas under BLM management. The conservation easements along with the future, site specific management plan provide enhanced protections and management of the Federal and Non-Federal Parcels.

**Hawk Greenway****D-37****#27**

*Table 3Q-8 shows the loss of federal wetlands, yet a gain of a single spring, seep and discharge. This is an error as the great length of riparian streams on parcels A and B are over 9000 linear feet and certainly have many sections of wetlands and sponge-like charge and re-charge zones, springs and seeps which fill and refill the streams. It is an oversight not to list them as losses.*

Response:

Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones notes that the proposed exchange would result in a reduction of riparian/wetland habitats, streams, and potential wetland areas under BLM management. However, the conservation easements along with the future, site specific management plan provide enhanced protections and management of the Federal and Non-Federal Parcels.

**Hawk Greenway****D-37****#28**

*It is claimed that the live, running water on the federal parcels A and B is owned already by the proponents, due to their irrigation water rights down below. However, any such claim ignores the fact that a change in use or diversion point would require a water court adjudication, and that the owner of the above lands actually has beneficial uses of the water flowing as it naturally does across the landscape. Currently, the owner of the lands (BLM) could protest any such change. Once private, the new owner could exercise all sorts of changes, the rights to do so are carefully spelled out in the CE (hydro, ponds, ditches, etc. 3-133*

Response:

As noted in Chapter 3 Section O – Water Rights, no water rights are associated with the Federal Parcels. Although Thomas Creek and Potato Bill Creek pass through Federal Parcel A, water rights for these creeks are owned by the Proponents and the water is put to beneficial use on their adjacent private lands. Regardless of ownership, a change in use or diversion point would require a water court adjudication; however, these rights are and would continue to be, privately held. Since it does not own water rights on these creeks, the BLM does not have the right to object to a change in use, regardless of whether or not it owns the land.

As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the Trusts to preserve and protect the “Conservation Values” of the parcels, including stream health, in perpetuity. Provisions for alternative energy generation are common in conservation easements and the conservation easement for Parcel A allows for micro-hydro electric development in the Thomas Creek watershed only, in accordance with all applicable laws and upon prior notice to the Trust, as a permitted use. Any permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values. These uses are allowed provided they do not impair the relatively natural habitat for native plants (including Harrington penstemon habitat), wildlife, or similar ecosystems within and upon the Parcels. In addition, these uses may be permitted only when in

accordance with all applicable laws and upon prior notice to the Trust.

**Hawk Greenway**

**D-37**

**#29**

*Water rights Sutey Page 3-95 The document states that “Although the BLM would not be acquiring fish habitat, the senior water rights that would be acquired with the parcel would provide the opportunity to improve the aquatic and riparian habitats of Cattle Creek, which is known to support good populations of brown trout, mottled sculpin, and low densities of brook trout.” They are not farming or irrigating the 116 acres of “prime farmland if irrigated” on the Sutey, further limiting its value as wildlife habitat. The stretch of Cattle Creek as described is not listed by the CWCBC as a threatened stretch (?), thus any water released into the stream there through relinquishment of the sutey water right would simply be scooped up by the next downstream water right holder and used to satisfy their next in line water rights. The analysis describes the water rights as a balanced trade-off to be used to create riparian habitat and fish habitat and increased recreational opportunity. This is highly speculative and deeply flawed. There is no public access (?) to the cattle creek stream downstream from the Sutey, so any claim of enhanced recreational opportunity with regards to fishing is a mistaken claim.*

Response:

The BLM has made no decision with respect to the future use of the acquired water rights. As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife (including riparian and fish habitat), water rights and usage, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan.

**Hawk Greenway**

**D-37**

**#30**

*There are no aquatic resources worth mentioning on the Sutey ranch, there is no equality at all in the trading off of some 9000 linear feet of riparian habitat for lands without live, running water on it. Recreation is not the only value you are charged with managing, and getting rid of more than a mile of fine, live stream habitat is simply outrageous.*

Response:

As noted in Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones, Non-Federal Parcel 1 contains riparian/wetland habitat along a tributary to Cattle Creek, which is partially fed by a spring or flowing seep in the pasture to the south. The riparian habitat along the ephemeral stream channel supports junipers and pinyon pine, Gambel oak, snowberry, serviceberry, chokecherry, and a few broadleaf cattails in the channel bottom. Canada thistle is also present. This riparian/wetland habitat covers approximately 0.18 acre, including an estimated 0.02 acre of potential wetlands. In addition, there are three stock ponds which are seasonal aquatic sites surrounded by crested wheatgrass (*Agropyron cristatum*) and other upland pasture grasses. The maximum water surface of these three stock ponds is estimated to cover approximately 0.2 acre. Wetlands on Non-Federal Parcel 2 are limited to the banks of the Prince Ditch. The riparian/wetland habitat is estimated to cover 0.6 acre; wetlands potentially account for 0.06 acre of this area. With the conservation easements, riparian habitats on the Federal Parcels would provide the same benefits as they presently do under BLM management.

The proposed exchange would result in a reduction of riparian/wetland habitats, streams, and potential

wetland areas under BLM management. The conservation easements along with the future, site specific management plan provide enhanced protections and management of the Federal and Non-Federal Parcels.

## 4.0 WILDLIFE AND AQUATIC SPECIES

**Paul Andersen**

**D-2**

**#31**

*This is winter Elk and Deer range. A couple years ago the Department of Wildlife spent an entire summer with a D-9 bull dozer rehabilitating this land.*

Response:

As noted in Chapter 3 Section L – Wildlife, each of the Federal and Non-Federal Parcels contain Severe Winter Range, Critical Winter Range, Winter Concentration Areas and/or Winter Range for American elk and mule deer. As discussed under the “Direct Effects” heading for Alternative 2 within Chapter 3 Section L, the direct effect of the proposed land exchange would be a change in ownership/management of the wildlife habitats on the Federal and Non-Federal Parcels. Although there would be a reduction of some types of habitat in federal ownership for these species on BLM lands, the change in management would not have a substantive impact on the American elk or mule deer that occur on the Federal and Non-Federal Parcels. These habitat types are common and extensive within the general landscape of the Project Area, the acres entering federal ownership would be protected by BLM management and the acres removed from federal management would be protected in perpetuity through the conservation easements. In addition, the conservation easements also require the Proponents to manage big game, habitat and vegetation on Parcels A and B according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels.

In addition, in its official comments submitted on the EA, CPW has stated support for the Proposed Action as well as support for the terms of the conservation easements. CPW has stated “that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Dorothea Farris**

**D-6**

**#32**

*The Aspen Valley land Trust has indicated that if the exchange goes through, it will hold total conservation easements covering more than 2700 acres (4+ square miles) on the Two Shoes Ranch itself, plus additional easements held by AVLTL and/or Pitkin County nearby. This combined open space and habitat protection will be another very beneficial impact of the exchange.*

Response:

Comment noted.

**Anne Rickenbaugh**

**D-22**

**#33**

*By consolidating land ownership boundaries...and improving management of public lands...there is potential benefit to the public in terms of increased protection and enhancement of wildlife habitat. EA at 1-7.*

*The potential benefit is only potential. See comments on “Application of Conservation Easements...” and*

*“Site Specific Management Plan.” Moreover, a catalogue of the potential benefits lost from the Federal Parcels shows a much more substantial loss than this document describes. See Comparison of Values Lost and Gained under the Proposed Action.*

Response:

The term “potential” was used in the EA because no decision had been made. The BLM has determined that consolidating land ownership boundaries and improving management of public lands would provide increased protection and enhancement of wildlife habitat. Should the proposed land exchange be approved, the Decision Record will clearly outline impacts to public values, as described in the EA, along with a formal public interest determination.

**Anne Rickenbaugh**

**D-22**

**#34**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*No protection for any plant or animal species which might receive special legal or BLM status in the future.*

Response:

As discussed in Chapter 3 Section L – Wildlife, all habitat on the Federal Parcels would be protected from direct loss, modification, and fragmentation in perpetuity by the conservation easements if the land exchange were to be approved. The possibility of special status species being listed in the future is not reasonably-foreseeable and cannot be analyzed in the EA per NEPA and BLM regulations. However, it is expected that the conservation easements would provide adequate future protections for the species and habitats present on the Federal Parcels should they be assigned a special status designation in the future. The conservation easements for Parcels A and B would be held by the AVLTT, and they specify that a management plan would be developed to protect the Conservation Values of the parcels, including special status species. AVLTT has indicated that their management plans are periodically updated to address issues such as newly listed plant or animal species. The conservation easement for Parcels C, D and E, which would be held by the EVLTT provides for protection of future special species on these parcels within the deed.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#35**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:...*

*Decreased protection for songbirds as described in the Purposes of the Parcel A conservation easement, as the easement allows for increased foot and OHV trail construction. Increased trail construction and winter use of roads and trails could affect the big horn herd as well.*

Response:

As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the Trusts to preserve and protect the “Conservation Values” of the parcels, including

habitat, in perpetuity. Any permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values. These uses are allowed provided they do not impair the relatively natural habitat for native plants (including Harrington’s penstemon habitat), wildlife, or similar ecosystems within and upon the Parcels. In addition, the easements also require the Proponents to manage big game, habitat and vegetation on Parcels A and B according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels.

Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law and terms of the easement. A baseline documentation report is created for each easement that describes the land’s physical condition at the time of the easement’s grant, as well as the nature and condition of the Conservation Values being protected. After the easement has been granted, the Trusts’ monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts’ Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts’ action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#36**

*The document should also mention the habitat loss of bears and lions, as they are the most important predator species.*

Response:

As noted in Chapter 3 Section L – Wildlife, the proposed action does not result in a habitat loss for terrestrial wildlife due to the use conservation easements on the Federal Parcels. The terrestrial wildlife in the Analysis Area includes a diversity of species and groups, including some predator species. However, due to the number that are likely present, the assessment of impacts to terrestrial wildlife species was accomplished by using species of the highest interest as a general indicator of habitat condition. Specifically, mule deer, American elk, and Rocky Mountain bighorn sheep were analyzed because: 1) these species have high social and economic value, 2) these species offer general indicators of habitat condition and 3) the health and size of their populations are more routinely assessed by Colorado Parks and Wildlife (CPW). By monitoring population trends for each of these species, the health of the wildlife community (including apex predators) can be extrapolated, and the impact and effectiveness of management actions can be assessed and modified as needed. In addition, CPW provided input into which terrestrial wildlife species should be analyzed in the EA and bear and lion were not included on the agency’s list.

**Anne Rickenbaugh**

**D-22**

**#37**

*Additionally, the Proposed Action could eliminate future investment (public or private) in habitat management for these species (Elk, deer, grouse, turkey, bear and mountain lion). See Section IV. Conservation Easements.*

Response:

As discussed in Appendix A, the conservation easements that would be placed on the Federal Parcels include provisions for management of big game, habitat and vegetation. Specifically, the easements require the Proponents to manage big game, habitat and vegetation on Parcels A and B according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. Habitat management is required on Parcels C, D and E under the Resource Management and Enforcement terms of the easement. Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#38**

*Elk Production areas on the Sutey Ranch may be impacted by Recreation*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including recreation and wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the future management plan would determine the appropriate balance between wildlife enhancement and recreation through a rigorous planning process. If Parcel 1 is not acquired by BLM, it may be subdivided and developed into as many as 278 homesites, dependent upon approval by Garfield County.

**Anne Rickenbaugh**

**D-22**

**#39**

*The EA does not adequately address conflicts and management priorities between wild species - domestic and wild species - and human user groups on all parcels to allow critical evaluation to the action and no action alternatives.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including recreation and wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the future management plan would determine the appropriate balance between wildlife enhancement, domestic species and recreation through a rigorous planning process. If Parcel 1 is not acquired by BLM, it may be subdivided and

developed into as many as 278 homesites, dependent upon approval by Garfield County.

**Anne Rickenbaugh**

**D-22**

**#40**

*The EA's failure to address the ways in which cattle can impact the health of the Sopris Bighorn herd is a serious issue. Volumes of research, both historic and recent suggest that bighorn contact with cattle can transfer an extremely fatal disease (hemolytic *Mannheimia haemolytica*, bio group I) to the bighorn.*

*So this is clearly an issue and is not addressed in the EA or the CE. Without public management authority from CPW and BLM this herd remains fully vulnerable to any contact from Cattle. Furthermore, the CE does not address existing stressors from ranch and cattle ranching activity that may be affecting the health and decline of this particular BHS herd. Where cattle were introduced to a Bighorn range, Bighorns immediately vacated a 5 year established grazing area and relocated without a return inspection for 8 months. Steinkamp, 1990, found that introduced cattle in a bighorn area resulted in complete relocation of the Bighorn sheep with no return.*

*Finally, the presence of cattle significantly affects the BHS movements and foraging patterns, so much as to repel the BHS from preferred foraging areas; foraging efficiency is also affected*

Response:

As discussed in Appendix A, the conservation easements that would be placed on the Federal Parcels include provisions for management of big game, habitat and vegetation. Specifically, the easements require the Proponents to manage big game, habitat and vegetation on Parcels A and B according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. In addition, the conservation easements require the development of a separate grazing management plan. Should the land exchange be approved, these management plans are expected to protect bighorn sheep from the potential impacts from grazing cattle.

Based on CPW observations and telemetry data, bighorn sheep are in and around the Potato Bill Creek/Lion's Mane area between November and May, whereas cattle are not in the area until July. Bighorn sheep remain on the south facing slopes of the Lion's Mane and the west to northwest facing slopes above the Seven Oaks subdivision. Bighorn sheep occasionally venture over the top of the ridge, but never more than approximately 100 yards to the north. Cattle, on the other hand, never venture south of the toe of the north-facing, dense, Gambel oak dominated slopes leading up to the Lion's Mane. Given that cattle and bighorn sheep do not use the same terrain and are typically not in the same general area at the same time, the BLM has not observed, and does not anticipate, a conflict between cattle grazing and the bighorn sheep population. Grazing has historically occurred in this area, under the Potato Bill allotment, and no effect on bighorn sheep has been observed. A more detailed analysis of cattle grazing on Parcel A was completed by BLM in the EA for the Thomas Allotment Grazing Permit Renewal.

Additionally, in its official comments submitted on the EA, CPW has stated "CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife."

**Anne Rickenbaugh**

**D-22**

**#41**

*The big horn mapping shows winter & severe wintering area for BHS in the Lion's Mane area only. It does not show the extent of cattle use that would effect forage condition. It would be important to expand the information portrayed in Figure 7 to include watering, foraging, production, and migration areas in and out of Parcel A for deer, cattle, and bighorn. In the CE there are no management plans to protect*

*these conservation values especially for Bighorn sheep and deer when combined with cattle use.*

Response:

All wildlife maps in the EA have been updated to show the extent of the illustrated habitat types outside the exchange parcel boundaries. The data used to create these maps are provided by Colorado Parks and Wildlife, but they do not produce maps of cattle habitats and activities therefore none have been included as a part of the EA. For bighorn sheep, CPW only maps water sources that are known to be used by the sheep in dry, water scarce areas. None of these have been mapped on or adjacent to Parcel A. Figure 7 has been updated to illustrate the bighorn sheep production areas located south and southwest of Parcel A, however none are located within the parcel. None of the mapped migration corridors for bighorn sheep are located on Parcel A. CPW does not map foraging areas for bighorn sheep. For mule deer, CPW does not provide mapping data for production areas, foraging or water sources. They do map migration corridors for mule deer, however none are located on or adjacent to Parcel A. The land area shown on Figure 6 has been increased to show mule deer habitat outside the parcel boundary.

The conservation easements on Parcels A and B specifically require the Proponents to manage big game, habitat and vegetation according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. In addition, the conservation easements require the development of a separate grazing management plan. Should the land exchange be approved, these management plans are expected to protect bighorn sheep from any potential impacts from grazing cattle.

Based on CPW observations and telemetry data, bighorn sheep are in and around the Potato Bill Creek/Lion's Mane area between November and May, whereas cattle are not in the area until July. Bighorn sheep remain on the south facing slopes of the Lion's Mane and the west to northwest facing slopes above the Seven Oaks subdivision. Bighorn sheep occasionally venture over the top of the ridge, but never more than approximately 100 yards to the north. Cattle, on the other hand, never venture south of the toe of the north-facing, dense, Gambel oak dominated slopes leading up to the Lion's Mane. Given that cattle and bighorn sheep do not use the same terrain and are not typically in the same general area at the same time, the BLM has not observed, and does not anticipate, a conflict between cattle grazing and the bighorn sheep population. Grazing has historically occurred in this area, under the Potato Bill allotment, and no effect on bighorn sheep has been observed.

Additionally, in its official comments submitted on the EA, CPW has stated "CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife."

**Anne Rickenbaugh**

**D-22**

**#42**

*Under the proposed action, there would be major losses of important wildlife habitat. For mule deer, there would be a loss of 645 acres of winter range and all 32.1 acres of severe winter range. EA at 3-94. For elk, though there would be a gain of severe winter range and production area, there would be a 772.1 acre loss in overall winter range. Ibid. All of the bighorn sheep winter range, including severe winter range, on the federal parcels would be lost with the exchange. Ibid. With private lands facing pressure for residential and other development in the area, winter range on public lands is extremely valuable and necessary for the health of big game herds. It must be conserved.*

Response:

As noted in Chapter 3 Section L – Wildlife, the direct effect of the proposed land exchange would be a change in ownership/management of the wildlife habitats on the Federal and Non-Federal Parcels. Although there would be a reduction of some types of habitat for wildlife species on BLM lands, the change in management would not have a substantive impact on wildlife species that occur on the Federal

and Non-Federal Parcels. The acres entering federal ownership would be protected by BLM management and the acres removed from federal management would be protected in perpetuity through the conservation easements. As a result of the conservation easements, there would be no pressure to develop the lands that become private and the existing private lands on the Non-Federal Parcels would become BLM lands and would be managed accordingly. Due to the establishment of the conservation easements, the total number of acres protected from development would increase as a result of the Proposed Action. In addition, it should be noted that the easements also require the Proponents to manage big game, habitat and vegetation on Parcels A and B according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. The BLM has determined the conservation easement on Federal Parcel A would adequately conserve bighorn sheep habitat.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#43**

*There would also be a loss of habitat for several sensitive species, including: Townsend’s bigeared bat (801.6 acres); goshawk (801.6 acres of foraging habitat and all 87.3 acres of nesting habitat); bald eagle (801.6 acres, including winter foraging areas); Brewer’s sparrow (33.5 acres); and milk snake (677 acres). Id. at 3-95. Sensitive species are ones that may need special attention to avoid listing under the Endangered Species Act. Trading away public oversight and management of habitat for these species will not help avoid such listing, and is clearly not in the public interest.*

Response:

As noted in Chapter 3 Section L – Wildlife, the direct effect of the proposed land exchange would be a change in ownership/management of the wildlife habitats on the Federal and Non-Federal Parcels. Although there would be a reduction of some types of habitat for wildlife species on BLM lands, the change in management would not have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels. These habitat types are common and extensive within the general landscape of the Project Area, the acres entering federal ownership would be protected by BLM management and the acres removed from federal management would be protected in perpetuity through the conservation easements. As a result of the Proposed Action, the total number of acres of protected habitat for these species would increase due to the establishment of conservation easements. In addition, the easements require the Proponents to manage big game, habitat and vegetation in a manner that protects their Conservation Values, including habitat for sensitive species. The BLM has determined the conservation easements would adequately protect habitat for sensitive species, where they are present.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#44**

*There is a net loss of 199 acres of publicly managed critical severe winter and winter habitat from parcels C, D and E. EA, Tables 3L-2–5:*

Response:

As noted in Chapter 3 Section L – Wildlife, the direct effect of the proposed land exchange would be a

change in ownership/management of the wildlife habitats on the Federal and Non-Federal Parcels. Although there would be a reduction of some types of habitat for wildlife species on BLM lands, the change in management would not have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels. These habitat types are common and extensive within the general landscape of the Project Area, the acres entering federal ownership would be protected by BLM management and the acres removed from federal management would be protected in perpetuity through the conservation easements. As a result of the Proposed Action, the total number of acres of protected habitat for these species would increase due to the establishment of conservation easements. In addition, the easements require the Proponents to manage big game, habitat and vegetation in a manner that protects their Conservation Values, including important wildlife habitats. The BLM has determined the conservation easements would adequately protect wildlife habitat.

Parcels C, D and E are in Eagle County and have been formally identified by BLM for disposal. If the Proposed Action does not occur, these parcels could be sold in the future without the protections of the conservation easement that have been offered.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#45**

*There needs to be field verification for all birds, amphibian and terrestrial and threatened and endangered species.*

Response:

Field reconnaissance has confirmed that no federally listed species are present on the Federal or Non-Federal Parcels. The evaluation of habitat types as a metric for determining the potential presence of wildlife species is a commonly accepted methodology and provides the detail necessary to evaluate the proposed land exchange. Due to the enforcement of conservation easements on all lands that would become private, the wildlife habitats present on the Federal Parcels would be protected from development and would be managed in a way that is consistent with protection of the Conservation Values, which include preservation of wildlife species and their habitats. In addition, the species present on the Non-Federal Parcels would be protected and managed by BLM in accordance with a site-specific management plan. Therefore, because the Proposed Action (which equates to a change in ownership of federal and non-federal lands) is not expected to have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels. Comprehensive presence/absence surveys were not deemed necessary to support this environmental analysis.

**Anne Rickenbaugh**

**D-22**

**#46**

*“The report identified Thomas Creek as containing rainbow trout...” EA. 3-79. and stated that “rainbow trout...exist in “multiple age classes.” This is indicative of a self-sustaining population, which is not mentioned in the EA.*

Response:

The EA cites data regarding the fish populations in Thomas Creek as presented in the Roaring Fork Land Health Assessment. As stated in Chapter 3 Section L – Aquatic Wildlife, the Land Health Assessment “identified Thomas Creek as containing rainbow trout (*Oncorhynchus mykiss*) and stated that rainbow trout densities within Thomas Creek were low, but that multiple age classes were present. The habitat within

Thomas Creek was generally reported as good, but the upper portion of Thomas Creek on Parcel A was rated as poor due to concentrated livestock grazing in that area. Thomas Creek was determined to be limited by the flow and volume of water, water diversion, and non-native species. This section of Thomas Creek provides poor fish habitat.” The discussion of multiple age classes is specific to other sections of Thomas Creek located outside Parcel A.

**Anne Rickenbaugh**

**D-22**

**#47**

*There is no mention in the aquatic section that improved riparian habitat via riparian management on parcel ‘A’ could improve the already existing fishery as a public benefit described above in the EA. 3-79., This comment should be added.*

Response:

As described in the EA, currently Thomas Creek (within Parcel A) provides poor fish habitat due to the effects of concentrated livestock grazing. However, changes to grazing management and the potential to improve the health of riparian communities are discussed numerous times in the EA. As documented in the EA, based on the results of the Roaring Fork Land Health Assessment evaluation of Land Health Standards 2 and 3 for Aquatic Species, some changes in grazing management have already been implemented on Parcel A. Specifically, to “rectify the problem of livestock concentration within Thomas Creek, which is causing Standards 2 and 3 to not be met, the ranch manager together with the support of the BLM identified the need for four new ponds on uplands away from the creek to draw cattle away from the riparian habitat. Subsequent to the field reconnaissance conducted in 2011, the number of AUMs permitted for grazing in the Thomas Allotment was voluntarily reduced from 80 to 49” (Chapter 3 Section L – Wildlife). In addition, “the number of days of summer grazing use was voluntarily reduced from 56 days to 15 days” (Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones). Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones also discusses the effects of grazing management on the riparian plant community and notes that “this new grazing system should benefit the wetland/riparian habitat along Thomas Creek by increasing total vegetation cover, and hopefully it will allow recovery of the native riparian and wetland vegetation.” Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones also discusses grazing and riparian management in regards to Public Land Health Standard 2 for Riparian Systems. In addition, grazing management in riparian areas and the potential benefits to the riparian/wetland habitat are discussed in regards to the conservation easements proposed for Parcels A and B, which documents that “the level and duration of grazing were reduced, and the construction of new ponds was authorized to reduce the effects of concentrated livestock grazing along Thomas Creek. When the Grazing Management Plan for the conservation easements is developed, the new grazing system would likely be evaluated to determine if it is allowing some recovery of the riparian/wetland habitat along Thomas Creek on Parcel A or if additional changes are necessary. If effective, similar changes to grazing management could be incorporated into the management plan for Parcel B” (Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones).

**Anne Rickenbaugh**

**D-22**

**#48**

*Amphibians reptiles and aquatic organisms; On site analysis is absent & inferred from habitat types vs. on ground analysis and therefore omitted from site specific management for TES Species.*

Response:

Field reconnaissance has confirmed that no federally listed species are present on the Federal or Non-Federal Parcels. The evaluation of habitat types as a metric for determining the potential presence of wildlife species is a commonly accepted methodology and provides the detail necessary to evaluate the proposed land exchange. Due to the enforcement of conservation easements on all lands that would

become private, the wildlife habitats present on the Federal Parcels would be protected from development and would be managed in a way that is consistent with protection of the Conservation Values, which include preservation of wildlife species and their habitats. In addition, the species present on the Non-Federal Parcels would be protected and managed by BLM in accordance with a site-specific management plan. Therefore, because the Proposed Action (which equates to a change in ownership of federal and non-federal lands) is not expected to have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels, comprehensive presence/absence surveys were not deemed necessary to support this environmental analysis.

**Anne Rickenbaugh**

**D-22**

**#49**

*“By releasing water into the unnamed tributary to Cattle Creek, which crosses Parcel I, the effects of low seasonal flows on fish productivity could potentially be reduced,” EA, p-95. However there is no discussion of the existing fishery on parcel A. This appears to be a bias on part of the BLM to dismiss an existing fishery on Parcel A, for possibly helping a remote off site fishery not involved in the exchange with little evidence. Cattle creek is also mostly private and public access on these lands should not be considered a public benefit.*

Response:

Thomas Creek within Parcel A currently provides poor fish habitat as noted in the Roaring Fork Land Health Assessment and as stated in the EA discussion of aquatic wildlife in Chapter 3 Section L – Wildlife. A 1.5-mile long section of Cattle Creek does flow through BLM lands and these areas were evaluated as a part of the Roaring Fork Land Health Assessment, which noted that the stream contains good populations of brown trout and mottled sculpin, and low densities of brook trout. Although the stream has adequate year-round flow, the LHA states that “water diversions result in low seasonal flows which likely impair fish productivity.” (LHA pg. 30) Acquisition of the senior water rights associated with the Sutey Ranch parcel would give BLM another management tool that could be used to counteract the effects of low seasonal flows on fish populations in Cattle Creek. It should be noted that Cattle Creek also flows through USFS lands and this area supports pure cutthroat trout in the upper portions.

**Anne Rickenbaugh**

**D-22**

**#50**

*EA does not appear to have field verified many species on the TES list. If not, it needs to be verified, if so it needs to be mentioned which species were actually verified in the field*

Response:

Field reconnaissance has confirmed that no federally listed species are present on the Federal or Non-Federal Parcels. The evaluation of habitat types as a metric for determining the potential presence of wildlife species is a commonly accepted methodology and provides the detail necessary to evaluate the proposed land exchange. Due to the enforcement of conservation easements on all lands that would become private, the wildlife habitats present on the Federal Parcels would be protected from development and would be managed in a way that is consistent with protection of the Conservation Values, which include preservation of wildlife species and their habitats. In addition, the species present on the Non-Federal Parcels would be protected and managed by BLM in accordance with a site-specific management plan. Therefore, because the Proposed Action (which equates to a change in ownership of federal and non-federal lands) is not expected to have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels, comprehensive presence/absence surveys were not deemed necessary to support this environmental analysis.

**Anne Rickenbaugh****D-22****#51**

*The EA includes no mention of the economically important game species Meleagris gallopavo, Wild Turkeys frequent many parts of parcel A during spring and fall hunting seasons and are economically important. The loss of this area will diminish the overall Turkey hunting experience significantly in the Crystal Valley which is substantially private in the areas where turkeys frequent. Wild turkeys are also present on Sutey ranch parcel; this is also missing in the EA. Currently there is no plan to allow turkey hunting there, so there are no trade-offs in value. Additionally, the EA should include some analysis of Grouse as it too, is an economic species.*

Response:

Federal Parcel A is surrounded by the Proponents' Two Shoes Ranch on the east and west sides, private land (the Prince Creek Subdivision) to the north, and the White River National Forest (WRNF) to the south. There is no legal, motorized public access to Parcel A. The only legal public access to this parcel is from the WRNF on the southern border where the topography is steep. There are no designated Forest Service or BLM roads or trails in the vicinity. As a result, there is limited access to Parcel A for turkey hunting and it is not heavily used for this purpose. Under the Proposed Action, enforcement of the conservation easements and the development and implementation of a management plan would protect and maintain the existing habitats for wild turkeys on Parcel A and would help to support the existing local population. Moreover, the total number of acres protected from development in the area would be increased following implementation of the Proposed Action and establishment of the conservation easements, which should benefit wild turkeys. Potential opportunities for turkey hunting on Non-Federal Parcel 1 (Sutey Ranch) would be evaluated during development of the site-specific management plan. Effects of the Proposed Action for grouse populations are expected to be similar to that for turkeys. It should be noted that CPW provided input into which wildlife species should be analyzed in the EA and Wild Turkeys and Grouse were not included on the agency's list.

**Anne Rickenbaugh****D-22****#52**

*Bald Eagle, Golden Eagle, Peregrine Falcon, Flammulated owl and Northern Goshawk are implied by habitat type. Again on site analysis is absent & implied from habitat type Densities of prey species are not identified or quantified by habitat type or in ground sampling for important raptors such as those listed above; these species would be affected by grazing practices. Other species of concern in the same category of inference by habitat without ground proofing are; Juniper Titmouse, Gray Vireo Oak, Pinion Jay.*

Response:

Surveys for raptors and raptor nests were conducted on all parcels during field reconnaissance in 2011. As discussed in more detail in Response #45, presence/absence surveys for all sensitive wildlife species and migratory birds were not deemed necessary to support this environmental analysis. The evaluation of habitat types as a metric for determining the potential presence of wildlife species is a commonly accepted methodology and provides the detail necessary to evaluate the proposed land exchange. Due to the enforcement of conservation easements on all lands that would become private, the wildlife habitats present on the Federal Parcels would be protected from development and would be managed in a way that is consistent with protection of the Conservation Values of the parcels, which include preservation of raptors, migratory birds, and their habitats. In addition, the species present on the Non-Federal Parcels would be protected and managed by BLM in accordance with a site-specific management plan. Therefore the Proposed Action, a change in ownership, is not expected to have a substantive impact on the raptors or migratory bird species that occur on the Federal and Non-Federal Parcels. Detailed trapping studies of prey populations are not warranted by this analysis.

**Anne Rickenbaugh**

**D-22**

**#53**

*There needs to be on site analysis to verify Brewers Sparrow rather than allowing that it could occur by habitat type. Grazing could significantly reduce & alter both quality and quantity of this habitat.*

Response:

As discussed in more detail in Response #45, presence/absence surveys for migratory birds were not deemed necessary to support this environmental analysis. The evaluation of habitat types as a metric for determining the potential presence of wildlife species is a commonly accepted methodology and provides the detail necessary to evaluate the proposed land exchange. Due to the enforcement of conservation easements on all lands that would become private, the wildlife habitats present on the Federal Parcels would be protected from development and would be managed in a way that is consistent with protection of the Conservation Values of the parcels, which include preservation of migratory birds and their habitats. In addition, the species present on the Non-Federal Parcels would be protected and managed by BLM in accordance with a site-specific management plan. Therefore the Proposed Action, a change in ownership, is not expected to have a substantive impact on the migratory bird species, including Brewer's sparrow that occur on the Federal and Non-Federal Parcels. As quantified in Table 3L-10, there would be a net increase in BLM management of sagebrush shrublands, which are potential habitat for Brewer's sparrow. Specific consideration of the effectiveness of the conservation easements for protecting Brewer's sparrow and other migratory birds, including the effects of grazing management, is contained in a more detailed wildlife specialist report in the project file.

**Anne Rickenbaugh**

**D-22**

**#54**

*The elimination of the irrigation from the Sutey Ranch greatly diminishes its value for wildlife, and is against the spirit of the BLM's own 2007 BLM Community Assessment Report, protecting agricultural productivity and public open space.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. No management decisions about the future use of water rights, including if they would be used to continue to irrigate Non-Federal Parcel 1, have been made at this time. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including wildlife and water rights, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the future management plan would determine the appropriate use of water rights through a rigorous planning process.

**Mark Fuller**

**D-28**

**#55**

*As the Colorado Department of Parks and Wildlife has stated on several occasions, wildlife on the southern end of the 1268 acres may actually fare better over the long run with the land in private hands.*

Response:

Comment noted.

**Mark Fuller****D-28****#56**

*As a resident of the Missouri Heights area, I have seen development encroach onto, and diminish wildlife habitat over the last 30 years. Large lot subdivisions, ranchettes and accompanying roads and infrastructure have segmented habitat and compromised natural systems. Preserving 557 acres of the Sutey Ranch immediately next to the existing 3,000 acre Red Hill SRMA will permanently protect approximately 5.5 square miles at the north end of Missouri Heights in an undeveloped state. This is especially important for our local elk herd, which, according to the EA, depends on the critical winter range found on Sutey Ranch.*

Response:

Comment noted.

**Paul Nieslanik****D-30****#57**

*Wants CP&W and BLM to discuss wildlife activity in these trade areas and it's impact if land swap occurs!*

Response:

The discussion and analysis of wildlife activity and impacts can be found in Chapter 3 Section L – Wildlife. CPW has submitted official comments on the project during both the scoping and EA comment periods and the agencies input has and will be incorporated into the final decision. As stated by CPW in its comments on the EA, “Colorado Parks and Wildlife (CPW) has reviewed the environmental assessment prepared for the Sutey Ranch land exchange and supports the Proposed Action.” Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Ron Velarde****D-31****#58****Colorado Parks and Wildlife**

*Colorado Parks and Wildlife (CPW) has reviewed the environmental assessment prepared for the Sutey Ranch land exchange and supports the proposed action.*

Response:

Comment noted.

**Ron Velarde****D-31****#59****Colorado Parks and Wildlife**

*Newly acquired lands by BLM will include the Sutey Ranch and Haynes (West Crown) parcel. These parcels contain important big game winter range and production areas for elk during calving. CPW feels strongly that local staff be involved in the land management of the Sutey Ranch and the development of site specific land use plans for each parcel.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, including CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan.

Should the proposed exchange be approved, the BLM would welcome input on the future management plan from local CPW staff.

**Ron Velarde**

**D-31**

**#60**

**Colorado Parks and Wildlife**

*CPW still recommends that the Sutey Ranch not be managed under the Red Hill Special Recreation Management Plan, and would like to emphasize the importance of the Sutey property as winter range to both deer and elk. The Sutey Ranch and surrounding areas serve as winter range habitat for deer and elk herds that range from north of Ruedi Reservoir and the Red Table Mountain area. Development within the Missouri Heights and Spring Valley areas has contributed to the loss of winter range habitat making preservation of remaining parcels critical for herd survival.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, including CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the BLM would welcome input on the future management plan from local CPW staff. The site-specific management plan for Non-Federal Parcel 1 (Sutey Ranch) would be a separate planning document from the Red Hill SRMA management plan.

**Fred Jarman**

**D-34**

**#61**

**Garfield County Community Development Department**

*The Sutey Ranch will function as an important linkage between BLM lands in Fisher Creek and the Red Hill Special Recreation Management Area (SRMA) as noted in the BLM’s Draft Resource Management Plan. This linkage offers an important wildlife corridor between two large areas of public lands.*

Response:

The opportunities created by Non-Federal Parcel 1 to connect Fisher Creek and the Red Hill SRMA would be explored in the future, site-specific management plan, should the Proposed Action be approved.

**Hawk Greenway**

**D-37**

**#62**

*Table 3L-10, page 3-94 is quite illustrative of the losses involved in this ill-conceived exchange. It documents a 9286 linear foot loss in riparian/aquatic habitat, what one would expect for a trade of good quality habitat for poor. It also documents overall losses in habitat in every category of mule deer habitat, most of the migratory bird habitat, and in half the elk habitat types. I don’t quite trust the claims that there is better elk production areas on the non-federal parcels (Where, exactly do they find the hundreds of acres of habitat?), and the cited increase in habitat in the two categories they claim, but the overall numerical weight of the study has one overriding message, that of loss. Lost habitat, lost federal management protections. To mitigate against this loss? The un-published CE’s stand alone as the mitigation.*

Response:

As noted in Chapter 3 Section L – Wildlife, the direct effect of the proposed land exchange would be a change in ownership/management of the wildlife habitats on the Federal and Non-Federal Parcels. Although there would be a reduction of some types of habitat for wildlife species on BLM lands, the

change in management would not have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels. These habitat types are common and extensive within the general landscape of the Project Area, the acres entering federal ownership would be protected by BLM management and the acres removed from federal management would be protected in perpetuity through the conservation easements. In addition, the easements also require the Proponents to manage big game, habitat and vegetation in a manner that protects the Conservation Values including wildlife habitat. The BLM has determined the conservation easements would adequately protect habitat for these species.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

Finally, the conservation easements for Parcels A and B are not unpublished; they are provided for public review on the BLM Sutey Ranch Land Exchange Website at:

[http://www.blm.gov/co/st/en/fo/crvfo/sutey\\_ranch\\_land\\_exchange.html](http://www.blm.gov/co/st/en/fo/crvfo/sutey_ranch_land_exchange.html).

The important habitat types for elk, mule deer, and bighorn sheep included in the EA in Figures 5 through 12 are derived from wildlife habitat mapping prepared by Colorado Parks and Wildlife which are available for download in GIS format from ESRI.com. The CPW mapping shows elk production areas on Parcel B and Parcel 1.

**Anne Rickenbaugh**

**D-39**

**#63**

*On site analysis is absent & inferred from habitat types vs. on ground analysis and therefore omitted from site specific management for TES Species identified.*

Response:

Field reconnaissance has confirmed that no federally listed species are present on the Federal or Non-Federal Parcels. The evaluation of habitat types as a metric for determining the potential presence of wildlife species is a commonly accepted methodology and provides the detail necessary to evaluate the proposed land exchange. Due to the enforcement of conservation easements on all lands that would become private, the wildlife habitats present on the Federal Parcels would be protected from development and would be managed in a way that is consistent with protection of the Conservation Values, which include preservation of wildlife species and their habitats. In addition, the species present on the Non-Federal Parcels would be protected and managed by BLM in accordance with a site-specific management plan. Therefore, because the Proposed Action (which equates to a change in ownership of federal and non-federal lands) is not expected to have a substantive impact on wildlife species that occur on the Federal and Non-Federal Parcels, comprehensive presence/absence surveys were not deemed necessary to support this environmental analysis.

**Delia Malone**

**D-41**

**#64**

**Crystal River Caucus**

*We share CPW's belief that wildlife may actually fare better after the 1240 acre Federal Parcel A becomes private, as the public will no longer be using that wildlife sensitive area, and any future threats of mineral development will be foreclosed by the conservation easement held by AVLT.*

Response:

Comment noted.

**Mike Pritchard**

**D-53**

**#65**

**Roaring Fork Mountain Bike Association**

*RFMBA wishes to emphasize that we are sensitive to the wildlife values on the Sutey Ranch, and will look forward to working with BLM, the Red Hill Council, Colorado Parks and Wildlife and others to produce a management plan for the Sutey Ranch, or a combined SRMA/Sutey plan, that will properly balance wildlife and recreational needs.*

Response:

Should the proposed exchange be approved, the commenter and the RFMBA are encouraged to be fully engaged in the future planning process for the Non-Federal Parcels. The site-specific management plan for Non-Federal Parcel 1 (Sutey Ranch) would be a separate planning document from the Red Hill SRMA management plan.

## 5.0 VISUALS

**Dorothea Farris**

**D-6**

**#66**

*I was on the Pitkin County BOCC when it approved 28 new housing sites on what has now become the combined Two Shoes Ranch. Under agreement with Pitkin County, (EA page 2-6) Two Shoes will surrender 10 of the 28 homesites if the exchange is approved. This will benefit both wildlife and scenic values along the lower Crystal River by removing homesites that were approved east (and uphill) of the Thomas Creek bridge. Two Shoes has also agreed to relocate a possible indoor riding ring in the area, if they ever decide to build one. Once again, this will help preserve the current scenic integrity along the river corridor and State Highway 133. As you know, State Highway 133 is one of the very scenic drives in Colorado. As a member of the West Elk Loop Scenic and Historic Byway Commission since its creation, I am very concerned about the protection of its environmental and historic integrity.*

Response:

The EA has been updated to reflect this benefit to the West Elk Loop Scenic and Historic Byway. Refer to Chapter 3 Section E – Visual Resources.

**Anne Rickenbaugh**

**D-22**

**#67**

*Under both the current RMP and under the pending RMP's preferred alternative, federal parcel A, on the highly and widely visible flanks of Mount Sopris would be afforded status and management under the protective VRM Class II...According to the EA primary private parcel I would be afforded categorization and management under VRM Class IV, significantly lower visual quality and lower protection than under Class II...These disparities in visual quality between the primary federal parcel (A) and the primary private parcel (I) and the differences in resulting visual resources management for the two primary exchange parcels raises serious questions about the qualitative equity of the proposed exchange. Neither these disparities nor their resolution are adequately addressed in the EA.*

Response:

Through the conservation easements and the Site-Specific Management Plan, the general scenic qualities on both the Federal and Non-Federal Parcels would be retained under the Proposed Action, regardless of the specific VRM Class that is currently applied, or would be applied, to the land. The EA notes in Chapter 3 Section E – Visual Resources, that Red Hill SRMA, adjacent to Non-Federal Parcel 1 is currently VRM Class IV. The scenic class of Non-Federal Parcel 1 would be determined in the site-specific management plan for the parcel.

Anne Rickenbaugh

D-22

#68

*Meanwhile, the proposed conservation easement for parcel A, accompanying the EA, inadequately addresses protection of visual resources of the parcel.*

*While the proposed conservation easement recognizes and briefly enumerates the visual and visible features of the parcel, the easement's protective measures are limited to, vaguely, not permitting "...a degree of intrusion or future development that would interfere with the essential scenic quality of the land."*

*The proposed conservation easement does include more detailed requirements affecting future uses and alterations relative to fencing, surface alteration, placement of materials, grazing, off road vehicles, habitat and vegetation management, and water facilities among others. Each of those requirements, however, is stated either in a generalized manner or relative to protection of natural values other than visual resources.*

*The generalized protections under the proposed conservation easement are based in the intention to "...preserve and protect the Conservation Values in perpetuity..." The definition of that term "Conservation Values" is contained in a separate Baseline Documentation of Conservation Values (prepared by Colorado Wildlife Services). That document, in turn, does not specifically identify or adequately define the visual or scenic values involved.*

Response:

The BLM has determined that the conservation easement is sufficient to protect the scenic quality of the land. Inherent in this determination is the stipulation that a degree of intrusion or future development that would interfere with the essential scenic quality of the land would not be permitted. The essential scenic quality of the land is documented in the Baseline Documentation of Conservation Values document mentioned by the commenter, through the text of the document and particularly within the 105 photos which accompany the document.

## 6.0 SOCIO-ECONOMICS

Anne Rickenbaugh

D-22

#69

*EA at 1-4 states: "When considering the public interest, the...BLM...shall give full consideration to" the following three factors:...*

*2. The needs of the state and local residents and their economies. The presumption in the EA is that recreation is the most important use for public lands in the Analysis Area. This presumption is flawed in that area still benefits from a large amount of agriculture. Under the proposed action, grazing opportunities would be lost. The EA also undervalues wildlife habitat: as evidence of how valuable this is to local populations, Pitkin County Open Space and Trails has invested over \$82 million since its inception in preserving wildlife habitat (concurrent with other open space values). And the current paradigm about the value of recreation is simply that, current; who knows what future needs the public lands might fulfill. Thus it seems foolish to undertake actions that result in fewer future opportunities.*

Response:

As documented throughout the EA, the BLM has determined that the Proposed Action would result in increased resource management opportunities in the future. The \$1.1 million donation would allow the BLM to develop a site-specific management plan for the Non-Federal Parcels as well as provide funds for the management of acquired Non-Federal Parcels into the future. As a tourism and recreation destination, the provision of recreational opportunities is recognized in the EA as the most important economic feature of public lands in the Analysis Area; however, the BLM recognizes public lands have many other equally important non-economic uses and these other values are considered throughout the EA. As noted in

Chapter 3 Section F – Livestock Grazing Management, the Proposed Action would not substantially impact range management or existing grazing rights on Federal or Non-Federal Parcels considered in the exchange. The conservation easements have provisions for continued, sustainable livestock grazing which minimizes the economic impacts to grazing operations. Wildlife habitat entering federal ownership would be protected by BLM management and the acres removed from federal management would be protected in perpetuity through the conservation easements.

**Hawk Greenway**

**D-37**

**#70**

*Under section D: social and economic resources, the document claims that “Although the proposed action would produce a net loss of public lands acreage in the three county area, the provision of recreational opportunities, which is the most important economic feature of public lands, would increase.” (page 3-37). They make this questionable claim due to a claim of increased public access to public lands. The crown is currently accessible to the public, in multiple locations without the prince creek parcel 2 known as the “hanes.” There is plenty of data about the current demand for public biking trails on the Crown and the Red hill management areas, but only speculation that the already high use levels (evidence of both demand and current accessibility) will increase if the two areas have relatively minor additions made to them. What is undisputable, however, is that the loss of the higher elevation, higher quality habitat will reduce the public’s opportunity to interact with the wildlife on that habitat (parcel A, B). This would be a net loss of recreational opportunity for the multiple other uses possible on these lands. Not all lands need to be mountain biking parks to have public recreation. Currently, the adjacent landowners (to parcel A) in the Prince Creek subdivision are unrestricted in their rights, as the public, to access and invite the public to recreate, including hunting and fishing, on Parcel A and access the slopes of Mt Sopris on a documented 18 miles of trail and roads. If this exchange goes through that access will be restricted, and that fact is not addressed in this analysis.*

Response:

The BLM has determined that the provision of recreational opportunities would increase under the Proposed Action, partially based on increased access to adjacent public lands, but primarily because of the increased recreation potential of the parcels themselves. As discussed in Chapter 3 Section C – Recreation, the recreation value of Non-Federal Parcel 1 is considered to be very high due to its proximity to the popular non-motorized trail network in the Red Hill SRMA, which is immediately adjacent to Parcel 1. BLM and public recreational opportunities provided on Parcel 2, such as mountain biking, hiking, hunting, motorsports and scenic driving, would be maintained. As private land, Parcel 2 is already receiving more public use, and hence providing more public recreational opportunities, than the Federal Parcels. BLM acquisition of this parcel would legitimize this use and allow for its continuance. As noted in Chapter 3 Section C – Recreation, a private recreational agreement with neighboring landowners would allow for continued recreational access to Parcels A and C for these owners. Adjacent landowners in the Prince Creek Homeowners Association have expressed support for the proposed exchange and have not expressed any interest in inviting the public to cross their private lands to access Parcel A.

The routes mentioned by the commenter are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. Motorized access to these routes requires crossing private lands owned by the Proponent, and using roads that are part of a private ranching system. These routes are not part of the BLM’s travel management system; however, if Parcel A is accessed by foot (the only legal public access to Parcel A is a circuitous, non-motorized route from the WRNF on the more remote southern border of the parcel, where the topography is steep and involves off trail travel and the use of game trails and unsanctioned, user-created trails that are not part of the WRNF or CRVFO travel system) these routes may be used by the public for non-motorized and non-mechanized use.

## 7.0 TRAFFIC AND PARKING

**Linda Singer Froning**

**D-5**

**#71**

*Second, the Red Hill Council wants more biking in the Red Hill area. This area is already overused, has major access problems, and is a parking disaster. The road that hikers and bikers must use to access the trails has become very dangerous to drive with dogs, kids, baby carriages and people all over the road. The parking area is a mess with people blocking the road. It will probably take someone getting seriously hurt before that road is closed to hikers and bikers. Unfortunately, the person who gets hit and the person trying to drive on the road will be seriously affected the rest of their lives. This is such an ill-conceived project and should not be expanded but should be shut-down.*

Response:

As noted in Chapter 3 Section B – Access and Transportation, users of the Red Hill SRMA trail system must traverse County Road 107 for approximately 0.3 mile to reach the developed trail system, which is creating conflicts between trail users and motorists. Although the BLM and County prohibit parking along County Road 107, some illegal parking is occurring. An indirect effect of the Proposed Action is future options to substantially improve public access and parking at the Red Hill SRMA and The Crown. The creation of additional parking for the Red Hill SRMA on Parcel 1, which would be addressed in a subsequent site-specific management plan and associated NEPA analyses, could alleviate parking issues on County Road 107.

**Anne Rickenbaugh**

**D-22**

**#72**

*Parking: two paragraphs describe the management problems the BLM is already experiencing with parking. EA at 3-10. It is unclear how the Proposed Action will alleviate the existing parking issues for the Red Hill SRMA; this issue again highlights the need for the EA to offer some details about what the future management plan might include.*

Response:

On the weekends, dozens of vehicles often line Prince Creek Road, creating potentially unsafe conditions. An indirect effect of the Proposed Action is future options to substantially improve public access and parking at the Red Hill SRMA and The Crown. The creation of additional parking for the Red Hill SRMA on Parcel 1 and for The Crown on Parcel 2, which would be addressed in a subsequent site-specific management plan and associated NEPA analyses, could alleviate parking issues on County Road 107 and Prince Creek Road. The Proposed Action would provide these future options, as well as the management tools and funds to capitalize on these options.

**Anne Rickenbaugh**

**D-22**

**#73**

*The EA states that “Parking conditions at the Red Hill SRMA and the Crown...would remain unchanged.” Id. at 3-14. This statement reiterates the presumption present throughout this document that there is absolutely no other way to address any of the issues. In this instance, the BLM could work with the County governments to provide and/or improve pull outs for parking along the county roads. Additionally, the agency could partner with the county governments to construct bicycle routes along the affected roads to get from Carbondale to the trail system. There is already a bicycle trail from Carbondale to Prince Creek road, and Pitkin County has begun efforts to create a grade separated route along its section of Prince Creek Road; this effort is the genesis of the Prince Creek portion of the Agreement between Pitkin County and the proponents. Whether the exchange proceeds or not, the County will continue to work toward this goal.*

Response:

The BLM acknowledges that other methods of addressing parking issues at the Red Hill SRMA and The Crown could be realized if the No Action Alternative is selected; however, there are no reasonably foreseeable plans, proposals or actions that may resolve these issues to include in the analysis. Pitkin County's efforts to create a bicycle route along Prince Creek Road, supported by the separate agreement between the Proponents and Pitkin County, is discussed as a connected action; however, this action is not expected to take place unless the Proposed Action is approved. While Pitkin County may continue to work towards the goal of creating a bicycle route along Prince Creek Road without approval of the Proposed Action, the BLM is unaware of any documented, reasonably foreseeable plans to do so. Therefore, parking conditions are discussed as remaining unchanged in relation to the No Action Alternative.

**James R. Udall**

**D-51**

**#74**

**Prince Creek Homeowner's Association**

*If the exchange goes through, and the ongoing negotiations over a Tybar easement are concluded in the near future, it will be possible for the public: to park off road at the "Bullpen" area on the lower Prince Creek Road (well below our road entrance), continue approximately 1 mile on a new trail on the Tybar Ranch, and then connect into the West Crown parcel and on into the Crown itself. All this activity will be off the Prince Creek Road, which will benefit bikers, hikers and car traffic over the unsafe status quo.*

Response:

Comment noted.

**Mike Pritchard**

**D-53**

**#75**

**Roaring Fork Mountain Bike Association**

*It (Non-Federal Parcel 2) will also provide a fallback location for parking off the Prince Creek Road in the unlikely event that efforts to establish parking lower down on the Tybar Ranch fail.*

Response:

Comment noted.

**Gloria Wallace**

**D-54**

**#76**

*After living here quite a few years, we know from experience County Rd. 112 is not up to County Rd. standards and an increase in traffic from recreational use wouldn't be supported. We are asking you not to include a parking lot at the base of Sutey ranch in future uses, as this would increase traffic on the road.*

Response:

A parking lot at the base of Sutey Ranch is not a component of the proposal. As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others.

The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of parking on the Non-Federal Parcels through this process.

**Davis Farrar**

**D-58**

**#77**

**Red Hill Council**

*The Sutey property offers an opportunity for dispersed access to Red Hill that only has one other access option at the existing Highway 82/133 trailhead. An alternative access point will help spread the use to the area and improve the user experience, minimize environmental damage and will provide a small parking area for visitors.*

Response:

The opportunities created by the Sutey Ranch for access to the Red Hill SRMA could be explored in a future, site-specific management plan, should the Proposed Action be approved.

## 9.0 VEGETATION

**Anne Rickenbaugh**

**D-22**

**#78**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*Decreased protection for the Mount Sopris bighorn herd and Harrington’s penstemon as the BLM will no longer have the authority to require management to protect them. The current easement language is silent on managing to protect the penstemon.*

Response:

As noted in Appendix A, the conservation easements on Federal Parcels A and B require the Proponents to manage big game, habitat and vegetation on the Parcels according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. It is expected this management plan would provide adequate protections for both bighorn sheep and Harrington’s penstemon. In addition, the conservation easements for Parcels A and B specifically mention Harrington’s penstemon as part of the natural habitat Conservation Value to be protected.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#79**

*Protections for a sensitive plant would be lost with the exchange. See Section IV – Conservation Easements (referring to penstemon)*

Response:

As noted in Appendix A, the conservation easements on Federal Parcels A and B require the Proponents to manage big game, habitat and vegetation on the Parcels according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. It is expected this management plan would provide

adequate protections for Harrington's penstemon. In addition, the conservation easements for Parcels A and B specifically mention Harrington's penstemon as part of the natural habitat Conservation Value to be protected.

**Anne Rickenbaugh**

**D-22**

**#80**

*The EAs conclusion that habitat will be enhanced by the Proposed Action is theoretical and based on a best case scenario for maintenance and enforcement of the terms of the conservation easements. It also assumes there is no possibility of additional special status wildlife or plant species in the future being found on the properties involved in proposed the exchange. If the CE's are not appropriately monitored, adapted, and enforced, there is potential for real habitat degradation on the Federal Parcels. See "Application of Conservation Easements..." section above.*

Response:

The EA does not specifically state that habitat would be enhanced by the Proposed Action, rather, the change in ownership of the parcels and hence a change in management is not expected to have a significant effect on the wildlife and plant species and habitats that occur on the parcels. Enforcement of the terms of the conservation easements would be the responsibility of the easement holders, the AVL T and EVLT. Due to the establishment of those easements, under the Proposed Action there would be a net increase in the total acres of land protected from development. For the easements held by AVL T on Parcels A and B, a management plan would be developed and implemented to protect the Conservation Values of the parcels, including habitat for plants and wildlife. For Parcels C, D and E the EVLT would require management direction from a qualified professional if the Conservation Values of the parcels are not being adequately protected.

The possibility of special status species being listed in the future is not reasonably-foreseeable and cannot be analyzed in the EA per NEPA and BLM regulations. However; it is expected that the conservation easements would provide adequate future protections for the species and habitats present on the Federal Parcels should they be assigned a special status designation in the future. The conservation easements for Parcels A and B and would be held by the AVL T, and they specify that a management plan would be developed to protect the Conservation Values of the parcels, including special status species. AVL T has indicated that their management plans are periodically updated to address issues such as newly listed plant or animal species. The conservation easement for Parcels C, D and E, which would be held by the EVLT provides for protection of future special species on these parcels within the deed.

Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land's physical condition at the time of the easement's grant, as well as the nature and condition of the Conservation Values being protected. After the easement has been granted, the Trusts' monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts' Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary. The BLM has determined this monitoring and enforcement procedure is adequate to protect habitat on the Federal Parcels.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Martha Cochran**

**D-60**

**#81**

**Aspen Valley Land Trust**

*Page 3.125 identifies the large stand of Harrington’s penstemon on Federal Parcel A. It should be noted that the conservation easement provides for habitat protection specifically for that species.*

Response:

Comment noted.

## 10.0 SOILS AND GEOLOGY

**Anne Rickenbaugh**

**D-22**

**#82**

*Non federal parcel 1 Throughout the document, discussion of this parcel states its high habitat and recreation values, but it does not mention its high agricultural values, only its agricultural history. The Soils section of the EA refers to the high quality of the soil (EA at 3-180), and the parcel does come with water rights and over 100 acres of irrigation. Currently, there is a growing local food movement in the Roaring Fork Valley which acknowledges high real estate values and competing interests for the existing agricultural lands, as those lands could be necessary in the future to help feed valley residents. Thus, agricultural values should be analyzed more in the EA.*

Response:

The commenter is correct in that Non-Federal Parcel 1 contains Deep Loamy Farmland Soils (112.6 acres), which are considered to be either prime farmland if irrigated or farmland of statewide importance if not. As noted in Chapter 1 Section I – Non-Issues, Farmlands, Prime or Unique were determined to be a non-issue because these are the only Prime or Unique Farmlands involved in the exchange and the BLM would be able to protect these resources if they came into BLM management under the proposed exchange. These lands could be leased by the BLM for agricultural uses in the future, but this would be decided upon in the future, site-specific management plan for the Non-Federal Parcels. The use of these agricultural resources would be analyzed in further detail through this future process.

It is important to note that under the No Action Alternative these lands would likely be sold for subdivision and residential development; thereby removing them from any potential agricultural use.

**Anne Rickenbaugh**

**D-22**

**#83**

*Farmlands: the EA says this is a non-issue because the Feds would acquire the agricultural lands instead of conveying them. However, there were several scoping comments about the preservation and/or loss of agriculture, ranching and public grazing opportunities. The issue is not who owns the land where these activities would occur; rather, it is whether the lands are managed to permit the activities. Rather than not addressing these comments at all, the document should treat farm/ag lands as an issue and use it as a basis to address these concerns.*

Response:

The BLM recognizes that there is public interest in continuing agriculture on Non-Federal Parcel 1; however, the decision to allow this activity would not occur until the development of the site-specific management plan for the parcel. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of

developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and farmlands, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan.

Farmlands, Prime or Unique were determined to be a non-issue because the Deep Loamy Farmland on Non-Federal Parcel 1 are the only Prime or Unique Farmlands involved in the exchange and the BLM would be able to protect these resources if they came into BLM management under the proposed exchange. It is important to note that under the No Action Alternative these lands would likely be sold for subdivision and residential development; thereby removing them from any potential agricultural use.

As noted in Chapter 3 Section F – Livestock Grazing Management, it is expected that grazing would continue on Federal Parcels A, B and B-1 through a private grazing lease, management of the rangeland of Parcels C, D and E would be dictated by the conservation easements on these parcels and livestock grazing on the Non-Federal Parcels would be managed under the future site-specific management plan.

### 13.0 WETLANDS

Anne Rickenbaugh

D-22

#84

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*Decreased protection for riparian and wetland habitats on and downstream from Parcel A and B, due to the retained development rights for micro hydropower, well construction, irrigation systems, pond and/or erosion control structures, and surface watering.*

Response:

The BLM does not currently have regulatory authority over the riparian and wetland habitats downstream from Parcels A and B, unless they are located on other BLM lands, and this would not change as a result of the Proposed Action. As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements require the Trusts to preserve and protect the “Conservation Values” of the parcels, including riparian and wetland habitats, in perpetuity. Provisions for alternative energy generation are common in conservation easements and the conservation easement for Parcel A allows for micro-hydro electric development in the Thomas Creek watershed only as a permitted use. In addition, the construction, installation, maintenance, improvement and replacement of ponds, wetlands, and irrigation structures (including ditches, pipelines, headgates and related equipment) are also permitted for agricultural purposes or the enhancement of wildlife habitat. However the allowance of these activities does not preclude other environmental review or permitting requirements with the U.S. Army Corps of Engineers, Colorado Division of Water Resources, or other regulatory agencies. For example, jurisdictional wetlands on the Federal Parcels are protected by Section 404 of the Clean Water Act, and impacts to wetlands and aquatic habitats require a wetland permit from the Corps, with some exemptions for agricultural activities. Stream diversions can only legally occur with the appropriate water rights, and water depletions to streams are regulated by the State of Colorado. In addition to the permitting requirements from regulatory agencies, the conservation easements also specify that these permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values, which would be monitored at least annually by the easement holder. Other provisions of the conservation easements and Proposed Action would also benefit the riparian and wetland habitats located downstream. Provisions of the conservation easements would affect land uses that contribute to erosion and sedimentation, and limitations on these activities would help to protect water quality downstream. Finally, the agreement between Two Shoes and the Pitkin County BOCC would further benefit downstream riparian and wetland habitats because the Proponents have agreed to place conservation

easements on two parcels of the existing Two Shoes Ranch within the area known as Potato Bill. These parcels abut Parcel A on the east and west sides and include a portion of Potato Bill Creek immediately downstream of Parcel A. A more specific discussion of the effects of the conservation easements on wetlands and riparian habitats is found in the EA in Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones.

Finally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh**

**D-22**

**#85**

*If the proposed exchange is approved and implemented, there would be a considerable loss of wetland acreage. In other words, much more wetland acreage (16.6 acres) would be transferred to private land than the United States would acquire (0.8 acres). See EA at 3-163.*

*The BLM dismisses this loss by stating that the proposed conservation easements for the parcels that the proponent would acquire would prevent or minimize the loss of wetlands. EA at 3-163, 3-164, 3-193, and 3-194. If so, the agency must require that the wetlands to be transferred out of public ownership be protected. Note the following from E. O. 11990:*

*When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall... (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law.*

*Id. at Chapter 4 Section. Note further that placing conditions on exchanges is specifically encouraged, if not required, where needed to protect the public interest:*

*Reservations or restrictions in the public interest. In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.*

*43 CFR 2200.0-6(i).*

*We believe there is a strong public interest in conserving wetlands, and that E. O. 11990 requires such action by federal agencies. Therefore, if the BLM approves the proposed land exchange, it must attach conditions that will result in the wetlands acquired by private interests being protected. This could include requiring that the conservation easements be finalized prior to the exchange being completed and/or other measures to assure that the wetlands transferred to private ownership will not be degraded.*

**Response:**

As noted in Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones, the conservation easements for Federal Parcels A and B are designed to protect the Conservation Values of these parcels, including riparian/wetland habitats, streams, and ponds. The easements would prohibit development of the parcels and they include special provisions to protect water resources. Specifically, they state that the Grantor shall not divert, dam, pollute, dredge, intentionally destabilize or degrade natural banks and shorelines, or otherwise alter Potato Bill Creek, Thomas Creek, or other naturally-occurring streams, springs, lakes, ponds, designated wetlands, or other surface or subsurface water features that may occur on the parcels without approval of the AVL. In addition, the easements would require that a Grazing Management Plan be developed by a natural resource professional. Proper grazing management would be an important aspect of managing the riparian/wetland habitats on Parcels A and B.

The conservation easement on Parcels C, D and E has been structured to protect the Conservation Values present on the three parcels, including riparian/wetland habitats and streams. Development of the parcels

would be prohibited, and only minor agricultural improvements would be permitted. In particular, the easement states that the Grantor shall not alter, impair, modify, or adversely change existing ponds, wetlands, or stream channels in a manner that is inconsistent with the preservation and protection of the Conservation Values. In addition, restrictions on timber harvest, mineral and energy development and exploration, off-road vehicle use, and surface disturbances, as well as the requirement to control noxious weeds would protect and preserve the Conservation Values of the Parcels, including riparian/wetland habitats.

Thus, the BLM has determined that the conservation easements would adequately require the protection of wetlands to be transferred out of public ownership as directed by EO 11990. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action.

As discussed above in Response #84, the establishment of these conservation easements affords a greater level of protection to wetlands because they preclude development and regulate other land uses that could negatively affect wetlands and waterbodies, and the total acres of wetlands protected from development would increase as a result of the Proposed Action, although there would be a loss of wetlands in federal ownership.

## 15.0 MINERALS

**Dawn Barton**

**D-64**

**#86**

*As the EA notes (page 3-131), Parcel A could someday be leased by BLM for oil and gas, even though its mineral potential appears to be low. As we know, mineral exploration can be disruptive to the land, so leasing the area is probably best avoided. The AVLT conservation easement will prevent any mineral leasing or development, and even the leasing of the parcel could lead to a controversy similar to what exists today directly across the valley in the Thompson Divide area. Thus, a mineral "withdrawal," as the AVLT conservation easement provides, probably provides the best long term protection for Parcel A.*

Response:

Comment noted.

## 18.0 NEPA PROCESS

**Patti Kay-Clapper**

**D-1**

**#87**

*Attached please find my May 1, 2013 letter to the BLM requesting a 30 day extension to the May 29, 2013 Public Comment Period deadline.*

*The purpose of my letter to you today is to further support my request based on the fact that I have submitted a FOIA request and I do not believe that I will receive the information I have requested in time to adequately review it and then to submit any public comment I may have on or before the 05/29/13.*

Response:

As directed by the BLM National Environmental Policy Act Handbook (H-1790-1), the BLM shall respond to comments from a public review of an EA and FONSI that are substantive and timely (i.e., within the allotted comment period). Substantive comments received before reaching a decision must also be considered to the extent feasible. The release of this EA for a 30-day comment period was made at the decision-maker's discretion; it was not required by NEPA or BLM regulations.

The BLM determined 30 days was adequate to review the document and that it was not necessary to extend the comment period for this EA, as the public will have another opportunity to review the EA in the protest and appeal process.

Freedom of Information Act (FOIA) requests are processed by the FOIA coordinator. The FOIA coordinator ensures that requests are processed fairly by treating similarly situated requests in a like manner.

**Chuck Downey**

**D-12**

**#88**

**Crystal Valley Environmental Protection**

*I am requesting a 60 day extension of the comment period as it is not possible for us to review and analyze a document of this size and complexity in the currently allocated 30 day comment period.*

*Please advise me of any change in the deadline for the comment period.*

Response:

As directed by the BLM National Environmental Policy Act Handbook (H-1790-1), the BLM shall respond to comments from a public review of an EA and FONSI that are substantive and timely (i.e., within the allotted comment period). Substantive comments received before reaching a decision must also be considered to the extent feasible. The release of this EA for a 30-day comment period was made at the decision-maker's discretion; it was not required by NEPA or BLM regulations.

The BLM determined 30 days was adequate to review the document and that it was not necessary to extend the comment period for this EA, as the public will have another opportunity to review the EA in the protest and appeal process.

**Anne Rickenbaugh**

**D-22**

**#89**

*CONSULTATION AND COORDINATION This section should contain information about each firm consulting on the Project and a description of the work they did. The BLM should acknowledge that the role the agency played in preparation of this EA was restricted to reviewing the document and that the entire document was prepared by a 3rd party contractor (SE Group) and supplied by 4th party sub contractors.*

Response:

As discussed in Chapter 4 Section A – Consultation and Coordination, the CEQ provides guidance for contracting NEPA documentation at 40 CFR 1506.5(b) and (c). “Third party contract” refers to the preparation of an EIS or EA by contractors paid by the applicant. Because the proposed land exchange was proposed by a non-federal party (i.e., the Proponents), the BLM determined that it is appropriate for a third party contractor to be used for preparation of this EA. Contracting an environmental document does not in any way reduce or eliminate the BLM's active role in the NEPA process; the BLM is responsible for all content within the EA document and the supporting materials, which must be included in the administrative record. Additionally, the findings in this analysis are those of the BLM, not of the contractor. Each member of the contractor team who worked on the EA, along with their job title, is identified in Chapter 4.

**Anne Rickenbaugh**

**D-22**

**#90**

*This document designed to facilitate public scrutiny was prepared by private contractors and paid for by the Proponent of the Proposed Action. The public agency charged with advocating for public resources did not participate in the preparation of this document and the public has a right to know more about the organizations that did.*

Response:

As discussed in Chapter 4 Section A – Consultation and Coordination, the CEQ provides guidance for contracting NEPA documentation at 40 CFR 1506.5(b) and (c). “Third party contract” refers to the preparation of an EIS or EA by contractors paid by the applicant. Because the proposed land exchange was proposed by a non-federal party (i.e., the Proponents), the BLM determined that it is appropriate for a third party contractor to be used for preparation of this EA. Contracting an environmental document does not in any way reduce or eliminate the BLM’s active role in the NEPA process; the BLM is responsible for all content within the EA document and the supporting materials, which must be included in the administrative record. Additionally, the findings in this analysis are those of the BLM, not of the contractor. Each member of the contractor team who worked on the EA, along with their job title, is identified in this section.

The BLM has had an active role in the project and the preparation of the EA. The BLM conducted years of discussion—internally, with the Proponents and with the public—prior to scoping. The Feasibility Analysis, scoping process and all early project work was completed by the BLM alone. The contractor (SE Group) did not become involved until after the close of the scoping period, prior to the preparation of the EA. A Memorandum of Understanding (MOU), as well as a study plan, was prepared to document the BLM’s direction to the contractor in the conducting the analysis. In addition, the EA was fully reviewed, edited and revised by the BLM Interdisciplinary (ID) Team prior to being released for public review.

**Anne Rickenbaugh**

**D-22**

**#91**

*From a public management perspective, the fact that the EA was prepared by outside contractors is important in that it underscores the lack of Agency commitment that encourages exchanges initiated by outside parties. The BLM is able to process these exchanges because so much of the work necessary to do so is performed by outside contractors and paid for by the proponents. One cannot help but wonder whether this and other exchanges would be pursued in the public interest if the responsible agency had to process them internally. Such a requirement would likely ensure that land exchanges occurred under the auspices of a larger, prioritized planning effort with ample opportunity for the public to participate in formulating the objectives and priorities of that larger effort.*

Response:

Proponent-driven NEPA is common in land exchanges and in many other NEPA applications. The fact that the proposed land exchange was proposed by a non-federal party doesn’t change the extent to which regulations, planning direction and public involvement govern BLM actions or decisions.

**Anne Rickenbaugh**

**D-22**

**#92**

*The proposed land exchange is not in the public interest. It appears to be designed to benefit a private proponent at the expense of public values. There would be a loss of wetlands, important wildlife habitat, and land with populations of a sensitive plant. There is no assurance that the values of the lands involved are equal or can be made equal, and a strong indication that the exchange would not comply with applicable regulation.*

Response:

There would not be a loss of the resources mentioned if the Proposed Action is approved, just a change in ownership. As discussed in Chapter 1 Section C – BLM Land Exchange Policies, the BLM is authorized to complete land exchanges under Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, after a determination is made that the public interest would be served. While the EA has discussed potential benefits and impacts of the proposed land exchange at length, the Decision Record (DR) would further document how the public interest would be served, should the Proposed Action be approved.

**Anne Rickenbaugh****D-22****#93**

*Therefore, the BLM must not approve the exchange as currently proposed. If it proceeds with a proposed exchange in the project area, the agency must first:*

*--release the appraisal data for the lands involved, show how the appraisals were conducted, and allow public comment;*

*--formulate a broader purpose and need and additional alternatives that consider all values of land, especially wildlife and plants, not just recreation;*

*--in a new or revised EA or EIS, provide a complete analysis of all issues relevant to any proposed exchange, including cumulative impacts.*

Response:

As discussed in the BLM Land Exchange Handbook (H-2200-1), approved ASD appraisals and review reports are official records used by the BLM in setting the price and reaching agreement on realty transactions. They are internal documents and are not subject to public release until the BLM has taken an action utilizing the information in the report. The appraisal report and appraisal review must be made available when the Decision Record is issued pursuant to 43 CFR 2201.7-1 (a). Appraisal reports will be released at the time of a decision, should the Proposed Action be approved.

As directed by the BLM National Environmental Policy Act Handbook (H-1790-1), the BLM has determined the Purpose and Need adequately describes the opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action. The Purpose and Need conforms to existing decisions, policies, regulation and law. In addition, the Purpose and Need reflects goals and objectives of the RMP. Consistent with the BLM National Environmental Policy Act Handbook (H-1790-1), the BLM has also determined the Purpose and Need is not “arbitrarily narrow; rather it is brief, unambiguous and as specific as possible.”

As directed by CEQ, the BLM has determined that the range of alternatives analyzed within the EA includes all reasonable alternatives, which are rigorously explored and objectively evaluated with respect to all relevant resources including wildlife and plants, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them.

Finally, the BLM has determined that the EA does provide a complete analysis of all issues relevant to the proposed exchange, including cumulative impacts. For a thorough discussion of cumulative impacts refer to Chapter 3 Section T – Cumulative Impacts.

**Chuck Downey****D-32****#94****Crystal Valley Environmental Protection Association**

*While we are aware there will be a number of public benefits resulting from the exchange, in the interest of full disclosure, we would recommend including an analysis or summary of the benefits versus detriments for the exchange. This, along with the financial analysis which will be forthcoming, forms the basis of the justification for the exchange. We recognize that such an analysis does not lend itself to*

*numeric techniques, but we recommend that a qualitative approach be used and the results included in the final EA.*

Response:

As discussed in Chapter 1 Section C – BLM Land Exchange Policies, the BLM is authorized to complete land exchanges under Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, after a determination is made that the public interest would be served. While the EA has discussed potential benefits and impacts of the proposed land exchange at length, the Decision Record (DR) would further document how the public interest would be served, should the Proposed Action be approved.

**Hawk Greenway**

**D-37**

**#95**

*By the way, there is no mention, none, of the PCHOAA [Prince Creek Home Owners Association Agreement] in the EA document at all, a grievous oversight. Every time they mention “indirect effects” and do not mention this document in their comments list I am amazed.*

Response:

The outcome of the Prince Creek Home Owners Association Agreement is discussed in Chapter 3 Section C – Recreation, as appropriate. The agreement is relevant to the decision at hand in that it spells out the agreed upon rights of access for these owners to Federal Parcel A should the proposed land exchange be approved. Therefore, this continued access is discussed in the EA where appropriate.

**Hawk Greenway**

**D-37**

**#96**

*Page 3-7 the document refers to the Agreement between the Two Shoes And the Pitkin County BOCC (as is also the case throughout the document), but makes no mention of the agreement between Two Shoes and the Prince Creek Homeowners Association. This agreement affects the exchange intimately and its exclusion from this analysis points once again to the inadequacy of this EA. The homeowners agreement was posted in the submitted comments on the BLM website and so must be included in the analysis. The agreement apportions a certain area of Parcel A to the PCHA for the personal use of the homeowners, provides payment to the homeowners for their use to settle a water dispute, in return for a letter of support for the land exchange. It also provides for the secrecy of the agreement until after the land exchange has gone through. The Conservation easements often cited in the EA document to justify the relinquishment of federal managerial responsibility for the public lands going private distinctly call for no subdivision or defacto subdivision of lands involved in the exchange. Allowing Prince Creek Homeowners recreational access to a certain portion of the exchange land, and not the rest of the parcel, is a “defacto subdivision” and thus not allowed under the terms of the CE.*

Response:

The outcome of the Prince Creek Home Owners Association Agreement is discussed in Chapter 3 Section C – Recreation, as appropriate. The agreement is relevant to the decision at hand in that it spells out the agreed upon rights of access for these owners to Federal Parcel A should the proposed land exchange be approved. Therefore, this continued access is discussed in the EA where appropriate. Portions of this private agreement which have no bearing on the BLM decision are not discussed in the EA.

Subdivision or defacto subdivision within the conservation easement refers to the ownership of the land. Allowing adjacent landowners to use some portions of the parcel for private recreation and disallowing use of other portions is not related to subdivision of the property. Rather it is a private land use and management decision not related to development or subdivision.

**John J. McCormick****D-56****#97**

*First of all, the “environmental assessment of the proposal” trumpeted by the BLM, was funded by the Wexner’s. Therefore, it cannot be credible or objective. This is a classic example of the fox guarding the henhouse. The BLM, from the beginning has appeared to favor this proposal. A while back, the BLM noted in a public “Land Exchange Feasibility Analysis” that “Most of the funding for processing this exchange will be provided by the Proponents.” Apparently the BLM supports private landowners instead of working to conserve public land.*

Response:

As discussed in Chapter 4 Section A – Consultation and Coordination, the CEQ provides guidance for contracting NEPA documentation at 40 CFR 1506.5(b) and (c). “Third party contract” refers to the preparation of an EIS or EA by contractors paid by the applicant. Because the proposed land exchange was proposed by a non-federal party (i.e., the Proponents), the BLM determined that it is appropriate for a third party contractor to be used for preparation of this EA. Contracting an environmental document does not in any way reduce or eliminate the BLM’s active role in the NEPA process; the BLM is responsible for all content within the EA document and the supporting materials, which must be included in the administrative record. Additionally, the findings in this analysis are those of the BLM, not of the contractor, and the decision must reflect a review of this NEPA document.

Proponent-driven NEPA is common in land exchanges and in many other NEPA applications. The fact that the proposed land exchange was proposed by a non-federal party doesn’t change the extent to which regulations, planning direction and public involvement govern BLM actions or decisions.

Finally, the commenter is correct in that the BLM believes the proposal has merits sufficient to analyze and consider. This is demonstrated by the fact that the agency accepted the proposal and adopted a Purpose and Need for Action that describes the opportunity to which the BLM is responding, what the BLM hopes to accomplish by the action, and reflects the goals and objectives of the RMP.

**John J. McCormick****D-56****#98**

*Once public land is traded away, it is gone. This exchange is setting a very bad precedent for future management of public lands. It shows that if you have enough money to hire enough lawyers and professional consultants, you can pretty much manipulate public agencies to get anything you want.*

Response:

As discussed in the Finding of No Significant Impact, land exchanges between private landowners and federal land management agencies (e.g., BLM and U.S. Forest Service) are relatively common, with each exchange considered on its own merits. The proposed land exchange is not expected to be precedent setting for future actions with significant impacts or represent a decision in principle about a future consideration. In addition, the Purpose and Need for this land exchange reflects the goals and objectives of the RMP, which dictates how public lands under the jurisdiction of the CRVFO should be managed.

**Mary Lou Zordel****D-11****#99**

*Why can’t you just lease the land to Mr. Wexner who already has a massive amount of beautiful land and keep the title where it belongs with The United States of America?*

Response:

This concept does not meet the Purpose and Need for Action, as it would not provide for a mechanism for the BLM to acquire Non-Federal Parcels 1 or 2, consolidate land ownership boundaries, or improve management of, and public access to, public lands while minimizing public trespass on private lands.

**A Carbondale Citizen**

**D-20**

**#100**

*I could support this proposal if one more element were provided for the public good. The owners of the Two Shoes ranch recently purchased land along the Crystal which includes a service road which is the old railroad grade. At this time we have a “bike trail to nowhere” that runs from Carbondale approximately five miles toward Redstone. Many bikers go between these two communities, or would like to; however, biking on the paved road has become hazardous due to increased general traffic and logging traffic specifically. If the Two Shoes owners were to grant an easement for the continuation of the bicycle trail along the river through the lots they purchased, then I think the public value of the trade would be more equitable.*

Response:

As discussed in Chapter 2 Section D – Alternative and Concepts Considered but Eliminated from Detailed Analysis, this alternative is beyond the scope of analysis and does not meet the Purpose and Need for Action. Additionally, the Newland Trail Feasibility Study, which conceptually analyzed trail alignments for the mentioned trail, explicitly states “None of the various alignments described in the plan are preferred or favored over another. Alignments shown as crossing private lands rely on the willingness of the landowners as a requisite to be considered.”

**Anne Rickenbaugh**

**D-22**

**#101**

*This purpose and need is unduly narrow. By limiting the consolidation of land ownership to the Red Hill, Crown, and Horse Mountain areas, the BLM ensures that only the proposed action could possibly fulfill the stated purpose and need. The courts have frowned on purpose and need statements that were similarly too narrow:*

*An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the goals of the agency’s action, and the EIS would be a foreordained formality.*

*(Cites other court decisions related to a narrow P&N and restricting analysis as a result)*

*The courts have held that the obligations of an EA to rigorously analyze alternatives are the same as in an EIS: “Any proposed federal action involving...the proper use of resources triggers NEPA’s consideration of alternatives requirement, whether or not an EIS is also required.” Bob Marshall Alliance v. Hodel, 852 F.2d 1223 (9th Cir. 1988). The procedural requirements of NEPA must be strictly interpreted “to the fullest extent possible.” California v. Block, 609 F.2d 753,760 (9th Cir. 1982).*

Response:

As directed by the BLM National Environmental Policy Act Handbook (H-1790-1), the BLM has determined the Purpose and Need adequately describes the opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action. The Purpose and Need conforms to existing decisions, policies, regulation and law. In addition, the Purpose and Need reflects goals and objectives of the RMP. The Purpose and Need is crafted to be specific to what the BLM hopes to accomplish at the local, site-specific (parcel) level; not at a CRVFO-wide or State level. Consistent with the BLM National Environmental Policy Act Handbook (H-1790-1), the BLM has also determined the Purpose and Need is not “arbitrarily narrow; rather it is brief, unambiguous and as specific as possible.”

As directed by CEQ, the BLM has determined that the range of alternatives analyzed within the EA includes all reasonable alternatives, which are rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them.

**Anne Rickenbaugh**

**D-22**

**#102**

*Only two alternatives are examined in detail in the EA: the required no action and the proposed action. This does not comply with the Council on Environmental Quality Regulations (CEQ) implementing the National Environmental Policy Act (NEPA), which state that “agencies shall...rigorously explore and objectively evaluate all reasonable alternatives.” 40 CFR 1502.14(a).*

Response:

As directed by CEQ, the BLM has determined that the range of alternatives analyzed within the EA includes all reasonable alternatives, which are rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. The range of alternatives is discussed in the EA in Chapter 2.

**Anne Rickenbaugh**

**D-22**

**#103**

*We believe that additional alternatives need to be analyzed, as discussed below. In the EAs section on Alternatives And Concepts Considered But Eliminated From Detailed Analysis, we believe the BLM prematurely dismisses some reasonable alternatives, as discussed below.*

*1. Transfer BLM parcels to management by the White River National Forest.*

*Elimination Rationale: This alternative is beyond the scope of analysis and does not meet the Purpose and Need for Action. EA at 2-7.*

*This alternative should be considered, as it does meet the Purpose and Need for Action. It would remove Parcel A from the BLM’s jurisdiction, thereby consolidating boundaries (there would be no more BLM boundaries) and improving management of BLM lands.*

Response:

As mentioned in Chapter 2 Section D – Alternative and Concepts Considered but Eliminated from Detailed Analysis, the parcels are beyond the boundaries of the WRNF, which would require an act of Congress to expand, and the Forest Service has stated it has no intention of accepting management of the parcels in official comments submitted on the proposal. Additionally, this alternative may meet a portion of the Purpose and Need for Action—to consolidate landownership around Parcel A. However, it would fail to meet other key portions of the Purpose and Need; specifically, it would not do anything to consolidate land ownership in the Red Hill, Crown or Horse Mountain areas. It also would not improve management of, and public access to, public lands under the jurisdiction of the BLM while minimizing public trespass on adjacent private lands. Also, transferring Parcel A to the WRNF would just transfer the management issues experienced by the BLM to the WRNF; not resolve the management issues.

**Anne Rickenbaugh**

**D-22**

**#104**

*We believe that additional alternatives need to be analyzed, as discussed below. In the EAs section on Alternatives And Concepts Considered But Eliminated From Detailed Analysis, we believe the BLM prematurely dismisses some reasonable alternatives, as discussed below.*

*6.) “Mr. Wexner should allow a narrow public easement through the parcel so the potential of trail bisecting it in the future is preserved. Secure that access easement from Prince Creek Road.”*

*Elimination Rationale: Numerous concepts for addressing the public’s concerns and minimizing potential resource impacts were explored by the Proponent and the BLM. This concept was not acceptable to the Proponent. Furthermore, the BLM does not hold access easements on Private land that do not connect to the BLM Land. Id. at 2-8.*

*If the exchange were to proceed, the BLM would, in fact have access to the Crown from the adjacent Parcel 2.*

*Writing off all public concerns about losing existing rights on Parcel A cannot be excused by stating that the Proponent was unwilling. This proposal is about privatizing public lands and abdicating public rights*

*and the BLM, as the advocate for the public, has a responsibility to protect those rights unless they can show that it is in the public interest to restrict them. The elimination rationale used here suggests the possibility that the Proponent is driving the need for the Proposed Action rather than a previously identified and legitimate public need.*

Response:

As discussed in Chapter 1 Section E – Scope of the Analysis and in Chapter 4 Section A – Consultation and Coordination, the proposed land exchange was proposed by a non-federal party (i.e., the Proponents). The BLM reviewed the Proponents land exchange proposal against the current RMP, determined there was potential for public benefit, and then crafted its own Purpose and Need to describe the opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action.

Presently there is no legal public access from Prince Creek Road to Parcel A. While a trail easement may be able to connect to BLM land on Parcel 22 if the proposed exchange were to be approved it would not connect to any other BLM land. Additionally, as mentioned in Chapter 3 Section C – Recreation, due to wildlife concerns and the protection of wildlife habitat, the WRNF has no plans to add any trails or maintain existing user-created trails in the area south of Parcel A where a trail easement would connect.

Finally, this concept was not acceptable to the Proponent, which would cause the BLM to lose the opportunity to acquire Non-Federal Parcels 1 and 2. As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. The change in ownership and management of these lands would be expected to create a net improvement for recreation opportunities on public lands compared to the No Action Alternative, as the Non-Federal Parcels are more accessible than the Federal Parcels.

**Anne Rickenbaugh**

**D-22**

**#105**

*We believe that additional alternatives need to be analyzed, as discussed below. In the EAs section on Alternatives And Concepts Considered But Eliminated From Detailed Analysis, we believe the BLM prematurely dismisses some reasonable alternatives, as discussed below.*

*13. “The BLM should fully consider the reservation of public rights in the exchange parcels...”*

*Elimination Rationale: Maintaining public recreational opportunities...would interfere with ranch management, is not an acceptable term; ...for the Proponents, and would not meet the Purpose and Need...Hence, this stipulation would cause the BLM to lose the opportunity to acquire the Non-Federal Parcels.” Id. at 2-10.*

*Again, the BLM’s has not demonstrated how its lack of insistence on the reservation of existing public rights is in the public interest, other than to suggest that it would jeopardize the acquisition of the non-federal parcels. The BLM clearly has the authority in land exchanges to reserve rights and restrict activities:*

*Reservations or restrictions in the public interest. In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies. 43 CFR 2200.0-6(i). The agency should use this authority in the proposed land exchange, or at least should not dismiss the possibility of doing so.*

Response:

The commenter is correct in that the BLM has the authority to reserve rights and restrict activities in land exchanges. As explained in the BLM Land Exchange Handbook (H-2200-1), “The regulations under 43 CFR 2200.0-6(i) provide that the public interest may be protected through the use of reserved rights or interests in the federal land. In general, mitigation in the form of deed restrictions on federal land conveyed into non-federal ownership should only be used where required by law or executive order, clearly supported by the environmental documentation and closely coordinated with the Field or Regional Solicitor. It is the BLM’s policy to limit reservations to those supported by the environmental documentation, public benefit determination process and fully considered in the appraisal process. Environmental mitigation in the form of reserved federal rights or interests should be evaluated for appropriateness as part of analysis of alternatives in the environmental documentation.” The EA has found that mitigation in the form of reserved federal rights is not appropriate in this case as it is not necessary for the public benefit determination and was not considered in the appraisal process.

Furthermore, as discussed in Chapter 2 Section D – Alternative and Concepts Considered but Eliminated from Detailed Analysis, the land exchange has been designed to compensate for the loss of public rights on the Federal Parcels with two Non-Federal Parcels, which would be open to public use and include numerous recreational opportunities. Because this concept was not acceptable to the Proponent and would cause the BLM to lose the opportunity to acquire Non-Federal Parcels 1 and 2, it was determined not to be in the public interest to reserve these rights. As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. The change in ownership and management of these lands would be expected to create a net improvement for recreation opportunities on public lands compared to the No Action Alternative, as the Non-Federal Parcels are more accessible than the Federal Parcels.

**Anne Rickenbaugh****D-22****#106**

*Again, note that the BLM had indicated no interest in the non-federal parcels until the proponents suggested the exchange. Also, the acquisition of the non-federal parcels has not been identified in the Purpose and Need for the Proposed Action.*

Response:

As discussed in Chapter 1 Section E – Scope of the Analysis and in Chapter 4 Section A – Consultation and Coordination, the proposed land exchange was proposed by a non-federal party (i.e., the Proponents). The BLM reviewed the Proponents land exchange proposal against the current RMP, determined there was potential for public benefit, and then crafted its own Purpose and Need to describe the opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action. The acquisition of the Non-Federal Parcels is supported by the Purpose and Need in that they would consolidate land ownership boundaries and improve management of, and public access to, public lands while minimizing public trespass on adjacent private lands. In addition, the acquisition of the Non-Federal Parcels is consistent with the goals and objectives of the RMP.

**Anne Rickenbaugh****D-22****#107**

*The purpose and need statement’s reference to public access and trespass issues essentially limits the BLM’s evaluation to recreation opportunities (and emphasizes just one such use--mountain bicycling). This ignores many other resources, which is not appropriate in the broader context of the BLM’s obligation to manage and protect other public-land values and features, especially wildlife and plants, as is further discussed in these comments.*

Response:

The Purpose and need for the Proposed Action in no way restricts the evaluation of resource impacts. Chapter 3 of the EA provides a thorough analysis of the full range of impacts to the biological, human and physical environment. In addition, protection and enhancement of wildlife is specifically mentioned in the discussion of the Purpose and Need.

**Anne Rickenbaugh**

**D-22**

**#108**

*The CEQ Regulations also state: “Agencies shall...include reasonable alternatives not within the jurisdiction of the lead agency.” 40 CFR 1502.14(c). One such alternative that should be, but has not been, considered is to partner with the Aspen Valley Land Trust and Pitkin County to purchase the Sutey Ranch.*

Response:

The alternative of partnering with the AVLTL and Pitkin County to purchase Non-Federal Parcel 1 (Sutey Ranch) would not meet the Purpose and Need for Action. Parcel 1 is in Garfield County rather than Pitkin County, although in rare occasions Pitkin County has protected land outside the borders of the county. In addition, the Pitkin County Board of County Commissioners has expressed support for the exchange. Pitkin County is not interested in acquiring Parcel 1.

AVLTL supports the land exchange as currently configured and believes BLM acquisition of the Non-Federal Parcel 1 is the most appropriate mechanism for protection. The AVLTL typically does not purchase lands outright, as they are not a land manager, and prefers to receive conservation easements via donation or purchase them.

**Anne Rickenbaugh**

**D-22**

**#109**

*The reference to consolidation of land ownership boundaries in the purpose and need (EA at 1-7) may be appropriate in concept, but it ignores the likelihood that private-interest motivation initiated this proposal.*

Response:

As discussed in Chapter 1 Section E – Scope of the Analysis and in Chapter 4 Section A – Consultation and Coordination, the proposed land exchange was proposed by a non-federal party (i.e., the Proponents). The BLM reviewed the Proponents land exchange proposal against the current RMP, determined there was potential for public benefit, and then crafted its own Purpose and Need to describe the opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action.

**Anne Rickenbaugh**

**D-22**

**#110**

*Additionally, the proposed action does not consolidate private/BLM boundaries in the Red Hill area; it expands the Red Hill island but the island is still surrounded by other lands, and the expansion does not connect it to other currently public lands in the area. The statement also ignores the fact that Federal Parcel A is currently connected to other Federal land.*

Response:

The commenter is correct in that BLM boundaries would not be consolidated in the Red Hill area; however, BLM lands would be expanded in the area with the potential for incorporation into the Red Hill SRMA, as determined under the future, site-specific management plan.

Although Parcel A touches the WRNF for approximately one-half mile on the southern border of the parcel, these lands are managed by a completely different federal land manager—the US Forest Service, which is part of the Department of Agriculture. From a management perspective, these lands being

adjacent to one another does not improve management efficiency if they are the responsibility of two separate agencies.

**Anne Rickenbaugh**

**D-22**

**#111**

*Moreover, the document does not clarify how the public “trespass” is actually occurring, as the proponents purchased land traversed by the public with the previous owner’s permission and allowed the public use of the property to continue. If trespass is occurring, then the EA should document this through records of calls to local law enforcement or citations issued.*

Response:

As discussed in Chapter 3 Section B – Access and Transportation, access to The Crown is provided through Non-Federal Parcel 2 and Prince Creek Road via informal consent from the private landowner. Although public use of this private parcel has historically been high, legal public access has never been formalized. As no public access easement is secured on Parcel 2, public use of the parcel to reach The Crown is provided at the option of the private landowner (the Proponents) and could be rescinded at any time. In order to secure continued public access, the BLM would like to acquire this parcel.

The current landowner (i.e., the Proponents) has not disallowed public use of Non-Federal Parcel 2 at this time; however, the Proposed Action would minimize the need for a legal trespass remedy in the future. If the parcel is not acquired by the BLM, numerous scenarios could result—all of which are purely speculative at this time, including:

- The status quo,
- Public access through Parcel 2 could be restricted, thereby inhibiting a popular access to The Crown,
- Parcel 2 could be developed according to land use regulations, likely limiting or restricting access to The Crown. Parcel 2 could be potentially be subdivided into three lots under current zoning; however approval of more than one homesite would be difficult and would have to compete in Pitkin County’s GMQS (Growth Management Quota System).
- Parcel 2 could be sold on the open market, with unknown consequences (e.g., it could be developed, placed into a conservation easement or open space, or acquired by a local or federal entity).

Any of these scenarios which would restrict public access to the parcel could lead to future trespass.

**Anne Rickenbaugh**

**D-22**

**#112**

*Pursuant to 40 CFR 1502.14(c) and (f), an alternative would be for the BLM to insist on stronger, more specific language in the easements that would give the Grantee’s grounds to impose specific protections for the sheep, songbirds, penstemon, and any future sensitive species. The easements should prohibit any additional road and trail construction, and be co-held with Colorado Division of Parks and Wildlife, thereby invoking the resources of the State of Colorado in enforcement. Such refinements could help to prevent some of the environmental impacts listed above.*

Response:

The BLM has determined that the conservation easements would adequately protect the resource values of the Federal Parcels. The conservation easements are finalized and are embedded in the Proposed Action.

Additionally, in its official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Doris Downey**

**D-46**

**#113**

*Article 2.D (11) on page 2-8 excludes consideration of a public access through a parcel owned by the Wexner family along the east side of the Crystal River because it is “beyond the scope of analysis” and therefore “not considered.” I disagree with this claim and request that a public easement be included through this parcel as part of the Sutey/Two Shoes land exchange.*

*I point out that providing a public access through this parcel on the old Crystal Railroad ROW would significantly enhance the Public Benefit of the overall land exchange. This parcel, sometimes referred to as “the Dodd parcel,” is contiguous with the Wexner’s 1,240 acre “Parcel A.” Access through this parcel would also enable the next phase of the Carbondale to Crested Butte trail to proceed and physically separate trail users from automobiles on State Highway 133, which is on the opposite side of the Crystal River.*

Response:

As discussed in Chapter 2 Section D – Alternative and Concepts Considered but Eliminated from Detailed Analysis, this alternative is beyond the scope of analysis and does not meet the Purpose and Need for Action. Additionally, the Newland Trail Feasibility Study, which conceptually analyzed trail alignments for the mentioned trail, explicitly states “None of the various alignments described in the plan are preferred or favored over another. Alignments shown as crossing private lands rely on the willingness of the landowners as a requisite to be considered.” Also, Parcel A is not contiguous with the “Dodd Parcel” mentioned by the commenter.

**Bill Hanks**

**D-49**

**#114**

*Early in the exchange process, Pitkin County OST has advocated that a bike and pedestrian trail be built in the Crystal River Valley to connect to a now deactivated trail on the rail grade near the Potato Bill and Nettle Creek drainages and connect upslope to the Dinkle Lake area. I believe that BLM staff were at the March 2010 Carbondale Town meeting where the Colorado Parks and Wildlife officials testified that such a trail would seriously impact elk and bighorn winter and summer habitat. Forest service personnel have also said that access to the deactivated trail would probably not be granted by their decommissioning the trail grade in 2011 in the Nettle Creek area. This is also an access area to the Carbondale municipal watershed. I believe this is also addressed on page 2-8 of the EA, suggesting that opening the area to additional public exposure is not in the best interest of Wildlife. The same is true of the bike path that OST has advocated through the former Dodd parcel near Nettle Creek and that the BLM should acquire a trail easement for that trail, (page 2-9 of the EA) as part of the land exchange. The Newland study did not support any specific route and the Carbondale Trustees rejected the same request. It is my understanding that the BLM does not hold trail easements on private land that do not connect to BLM land. I think the BLM correctly concludes in the EA that this is not a matter suitable for inclusion in the Sutey land exchange. Along with the Caucus, I support the Crystal Trail to be constructed on the six miles, between Bill Creek and Avalanche Creek on the side of the Crystal River within the 133 Hwy. ROW, where ample space exists. A Caucus Wildlife study in 2007 determined this was the appropriate alignment to protect the critical habitat on the east side of the river.*

Response:

Comment noted.

## 22.0 CUMULATIVE IMPACTS

**Anne Rickenbaugh**

**D-22**

**#115**

*The practice of land exchanges could threaten the public estate, as there has been no thorough cumulative effects of all the exchanges that have occurred over the years. We suggest needed additions to the existing analysis below. Moreover, as no one has ever undertaken analysis of what types of lands have been traded, and therefore, what types of public values are changing hands, it is easy to assume that the affluent private proponents of many of these exchanges increase their estates at the cost of reducing the public estate.*

Response:

Chapter 3 Section T – Cumulative Effects, indicates that 41 land exchanges have occurred in the project area between 1985 and 2012. Each of these lands exchanges underwent varying levels of site-specific environmental analysis prior to approval. As a result of these 41 land exchanges, the Federal Government has acquired a total of approximately 15,565 acres, and conveyed approximately 8,838 acres to non-federal ownership, resulting in a net gain of approximately 6,727 acres of public lands.

It is speculative to assume that previous land exchanges were not in the public interest; rather is more reasonable to assume they were in the public interest because under Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, federal agencies are only authorized to complete land exchanges after a determination is made that the public interest would be served.

**Anne Rickenbaugh**

**D-22**

**#116**

*The information provided is strictly limited to the analysis area. The discussion would offer a more comprehensive picture of the cumulative effects if the Scope of Analysis were broadened in two ways: Discussion of the Bear Ranch land exchange in Gunnison County should be included. Culturally, the town of Carbondale and Pitkin County residents are more connected to the Bear Ranch neighborhood than to the Eagle County Parcels. Public lands and the trail system within them connect Parcel A to Bear Ranch Local residents enjoy this plethora of back country recreation which includes the Maroon Bells/Snowmass Wilderness Area and its connection to the Raggeds Wilderness Area bordering Bear Ranch.*

*Because the Federal Government evaluates exchanges based on the benefits to the nation as a whole Table 3T-1 “Land Exchanges in the Project Area” should be expanded to include all acreage in the listed exchanges, regardless of location, in order to provide a complete picture of the exchanges’ overall effects on the nation’s public estate. It should also include a complete listing of the types of public values traded in the exchanges, i.e., access, wildlife habitat, minerals, agricultural resources, water resources, level of development encouraged or prevented by the exchange, how many utilized conservation easements, and so forth.*

Response:

As federal land managers, all BLM evaluations and decisions consider the national interest. As explained in the Federal Land Policy and Management Act (FLPMA), which defines BLM’s mission, “the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process.”

The definition of the Analysis Area directs the analysis and determines the scope of analysis; therefore, all information provided in the EA is correctly limited to the Analysis Area for any given resource. The BLM has determined the Analysis Area for cumulative effects is appropriate and limited the analysis and the information provided as such. The Bear Ranch Land Exchange in Gunnison County mentioned by the commenter is outside of the defined Analysis Area for cumulative effects.

The cumulative effects analysis in Chapter 3 Section 3T considers the direct and indirect effects of the Proposed Action in the context of 41 other land exchanges identified in the cumulative effects Analysis Area. National direction regarding land exchanges (i.e., FLMPA), requirements and resource protections placed on lands entering federal ownership in the 41 identified exchanges, the effects of an exchange on lands leaving federal ownership in the 41 identified exchanges and the overall effect of the 41 identified exchanges on public land ownership/management is considered. Specific details of the cumulative effects to each resource analyzed in this EA are also discussed.

As noted in Chapter 3 Section T, section 206 of the Federal Land Policy and Management Act (FLPMA) allows for the exchange of public lands (BLM and USFS), provided “the Secretary concerned determines that the public interest will be well served by making that exchange.” As such, the agencies require demonstration of net positive public benefit to conclude a land exchange. Dating back to 1984, all lands acquired by the United States Government through land exchanges in the cumulative effects Analysis Area have been incorporated into either BLM or USFS management plans, as appropriate. These management plans provide direction to the agency on a resource-by-resource basis, commensurate with law, regulation and policy. Sustainable use requirements and resource protections are placed on lands entering federal ownership, as defined in laws such as the FLPMA and the National Forest Management Act (NFMA). The effects of an exchange on lands leaving federal ownership are also considered as part of the exchange analysis. The 41 land exchanges considered throughout the cumulative effects Analysis Area have resulted in a net gain of approximately 6,727 acres of public lands. The public benefit requirement for each of the 41 land exchanges, in conjunction with the management requirements and protections afforded acquired federal lands and the net increase in federal land holdings in the Analysis Area indicate an overall benefit to the public estate.

**Anne Rickenbaugh**

**D-22**

**#117**

*The improved public access referred to (EA at 3-190) is a matter of opinion. While mountain bikers will gain access to more terrain, those who prefer solitude, hunting, and spectacular views of Mount Sopris and the Lion’s Mane would have lower-quality experiences as a result of the Proposed Action. Moreover, as the population increases, the loss of solitude and low-key dispersed recreation opportunities and the increased traffic at the more limited quantity of trailheads will have a negative effect on local access and transportation.*

Response:

As noted throughout Chapter 3 Section C – Recreation, recreational opportunities (experiences) are different than recreational access. These concepts are discussed separately and thoroughly in the EA. The expected impacts to both opportunities and access are specifically discussed. Public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of recreationalists who currently use the parcels are specifically mentioned as a user group who would be impacted by the proposed land exchange; many more recreationalists are expected to gain recreational opportunities through the acquisition of the Non-Federal Parcels. In addition, trailhead quantity would not be reduced under the Proposed Action.

**Anne Rickenbaugh****D-22****#118**

*Again, recreational opportunities for some will be enhanced by the proposed action, but they will be diminished for others. A discussion of the recreation opportunities gained or lost through the other exchanges would elucidate the cumulative effects of the Proposed Action.*

Response:

The cumulative effects analysis in Chapter 3 Section 3T considers the direct and indirect effects of the Proposed Action in the context of 41 other land exchanges identified in the cumulative effects Analysis Area. National direction regarding land exchanges (i.e., FLMPA), requirements and resource protections placed on lands entering federal ownership in the 41 identified exchanges, the effects of an exchange on lands leaving federal ownership in the 41 identified exchanges and the overall effect of the 41 identified exchanges on public land ownership/management is considered. Specific details of the cumulative effects to each resource analyzed in the EA are also discussed.

As noted in Chapter 3 Section T, the public benefit requirement for each of the 41 land exchanges, in conjunction with the management requirements and protections afforded acquired federal lands and the net increase in federal land holdings in the Analysis Area indicate an overall benefit to the public estate.

As discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. A limited number of recreationalists who currently use the parcels are specifically mentioned as a user group who would be impacted by the proposed land exchange; many more recreationalists are expected to gain recreational opportunities through the acquisition of the Non-Federal Parcels.

**Anne Rickenbaugh****D-22****#119**

*The effect of the Proposed Action would be a loss of livestock grazing opportunities. It would be useful to have more information on the increase or decrease of livestock grazing opportunities in the other land exchanges identified in this section.*

Response:

The cumulative effects analysis in Chapter 3 Section 3T considers the direct and indirect effects of the Proposed Action in the context of 41 other land exchanges identified in the cumulative effects Analysis Area. National direction regarding land exchanges (i.e., FLMPA), requirements and resource protections placed on lands entering federal ownership in the 41 identified exchanges, the effects of an exchange on lands leaving federal ownership in the 41 identified exchanges and the overall effect of the 41 identified exchanges on public land ownership/management is considered. Specific details of the cumulative effects to each resource analyzed in the EA are also discussed.

As noted in Chapter 3 Section T, the public benefit requirement for each of the 41 land exchanges, in conjunction with the management requirements and protections afforded acquired federal lands and the net increase in federal land holdings in the Analysis Area indicate an overall benefit to the public estate.

Also, as noted in Chapter 3 Section F – Livestock Grazing Management, the Proposed Action would not substantially impact range management or existing grazing rights on Federal or Non-Federal Parcels considered in the exchange.

**Anne Rickenbaugh****D-22****#120**

*Again, absent a detailed analysis of the land exchanges affecting the analysis area, there is no way of knowing if the actions affecting the size of the public estate, and habitat therein, has been affected over the long term.*

Response:

Chapter 3 Section T – Cumulative Effects, indicates that 41 land exchanges have occurred in the project area between 1985 and 2012. As a result of these 41 land exchanges, the Federal Government has acquired a total of approximately 15,565 acres, and conveyed approximately 8,838 acres to non-federal ownership, resulting in a net gain of approximately 6,727 acres of public lands.

The cumulative effects analysis in Chapter 3 Section 3T considers the direct and indirect effects of the Proposed Action in the context of 41 other land exchanges identified in the cumulative effects Analysis Area. National direction regarding land exchanges (i.e., FLMPA), requirements and resource protections placed on lands entering federal ownership in the 41 identified exchanges, the effects of an exchange on lands leaving federal ownership in the 41 identified exchanges and the overall effect of the 41 identified exchanges on public land ownership/management is considered. Specific details of the cumulative effects to each resource analyzed in the EA are also discussed.

As noted in Chapter 3 Section T, the public benefit requirement for each of the 41 land exchanges, in conjunction with the management requirements and protections afforded acquired federal lands and the net increase in federal land holdings in the Analysis Area indicate an overall benefit to the public estate.

**Anne Rickenbaugh**

**D-22**

**#121**

*The EA states that:*

*Quantification of the extent (i.e., acreage) of wetlands and riparian areas that were transferred between private landowners and the United States Government over the past three decades is beyond the scope of this analysis.” Id. at 3-193.*

*This information should be available through NEPA documents for the past exchanges and maybe other sources. Such analysis would help to describe the cumulative environmental effects of land exchanges. Also, the net loss of wetlands under the Proposed Action is an environmental impact, if the conservation easements are not maintained or enforced as necessary.*

Response:

The cumulative effects analysis in Chapter 3 Section 3T considers the direct and indirect effects of the Proposed Action in the context of 41 other land exchanges identified in the cumulative effects Analysis Area. National direction regarding land exchanges (i.e., FLMPA), requirements and resource protections placed on lands entering federal ownership in the 41 identified exchanges, the effects of an exchange on lands leaving federal ownership in the 41 identified exchanges and the overall effect of the 41 identified exchanges on public land ownership/management is considered. Specific details of the cumulative effects to each resource analyzed in the EA are also discussed. The statement “Quantification of the extent (i.e., acreage) of wetlands and riparian areas that were transferred between private landowners and the United States Government over the past three decades is beyond the scope of this analysis.” has been removed from the EA as the approach described above has been determined to be the most appropriate methodology for the cumulative effects analysis.

As noted in Chapter 3 Section T, the public benefit requirement for each of the 41 land exchanges, in conjunction with the management requirements and protections afforded acquired federal lands and the net increase in federal land holdings in the Analysis Area indicate an overall benefit to the public estate.

Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land’s physical condition at the time of the easement’s grant, as well as the nature and condition of the conservation values being protected. After the easement has been granted, the Trusts’ monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see

that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts' Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary.

The BLM has determined the conservation easements would adequately protect the wetlands leaving federal ownership, as directed by Executive Order 11990. Beyond the conservation easements, local, state, and federal agencies have developed landowner assistance programs, regulations, and ordinances that further protect and enhance wetland and riparian resources on private land. For examples, see Section 404 of the Clean Water Act; Pitkin County Land Use Code, Chapter 1: General Provisions, 1-60-280: Water Resources and Aquatic/Riparian/Wetland Areas; the Colorado Wetlands for Wildlife Program, and NRCS Conservation Programs.

**Anne Rickenbaugh****D-22****#122**

*Short of a more thorough effects analysis, it is premature to state that the cumulative effects of the proposed Sutey Land Exchange would be negligible, as the EA at 3-189 does.*

Response:

As noted in Chapter 3 Section T – Cumulative Effects, because the direct and indirect effects associated with the Proposed Action are in most cases minimal, and in some cases nonexistent, cumulative effects associated with the proposed Sutey Ranch Land Exchange are, by definition, negligible.

**Hawk Greenway****D-37****#123**

*No analysis of the cumulative effect of transferring water rights to the Federal Government despite many other water rights being acquired by the feds.*

Response:

The cumulative effects of the potential transfer of water rights are disclosed in Chapter 3 Section T – Cumulative Effects. The cumulative effects to water rights as a result of the proposed Sutey Ranch Land Exchange are considered negligible because the Proposed Action would result in a net gain of water rights managed by the BLM, which is a beneficial effect.

The cumulative effects analysis in Chapter 3 Section 3T considers the direct and indirect effects of the Proposed Action in the context of 41 other land exchanges identified in the cumulative effects Analysis Area. National direction regarding land exchanges (i.e., FLMPA), requirements and resource protections placed on lands entering federal ownership in the 41 identified exchanges, the effects of an exchange on lands leaving federal ownership in the 41 identified exchanges and the overall effect of the 41 identified exchanges on public land ownership/management is considered. Specific details of the cumulative effects to each resource analyzed in the EA are also discussed.

As noted in Chapter 3 Section T, the public benefit requirement for each of the 41 land exchanges, in conjunction with the management requirements and protections afforded acquired federal lands and the net increase in federal land holdings in the Analysis Area indicate an overall benefit to the public estate.

**Johno McBride**

**D-43**

**#124**

*If I have one criticism on the exchange EA, it is that the ‘cumulative effects’ section at the end perhaps understates the net benefits and could do a better job of summarizing that not a single acre of open space will be lost. I would encourage that section be beefed up if the document is revised or re-published in some form.*

Response:

Comment noted.

## **23.0 BLM PLANNING AND MANAGEMENT**

**Julie Beck Pope**

**D-15**

**#125**

*I am in favor of the land exchange IF there are no fires, camping or motorized vehicles allowed in the area.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Anne Rickenbaugh**

**D-22**

**#126**

*The EA does not demonstrate how the management of public lands would be improved through the acquisition of the non-federal parcels. Indeed, the Proposed Action would create intensive management challenges not present on the currently Federal parcels. See section on Site Specific Management Plan.*

Response:

The BLM acknowledges that new management requirements would be incurred as a result of the Proposed Action. However, the amount of increased management responsibilities would be addressed in the subsequent, site-specific management plan for the Non-Federal Parcels should the land exchange be approved. The \$1.1 million dollar donation included in the Proposed Action would offset the costs of any increased managerial responsibilities as the funds would be dedicated to covering the cost of developing a site-specific management plan for the Non Federal Parcels as well as for the costs of their long-term management. In effect, the BLM would be managing less public lands that are more consolidated/ accessible as a direct result of the land exchange. The BLM anticipates both increased management responsibilities and abilities as a result of the proposed exchange.

**Anne Rickenbaugh**

**D-22**

**#127**

*EA at 1-4 states: “When considering the public interest, the...BLM...shall give full consideration to” the following three factors:*

*1. The opportunity to achieve better management of federal lands. The No Action alternative offers much simpler management than the Proposed Action. The BLM’s obligations, consisting of occasional review*

*of grazing allotments, on the Federal parcels are substantially fewer than they would be on the non-Federal parcels. The latter obligations would entail managing up to 55,000 annual user visits and the associated needs, including trail development and maintenance, parking and traffic management, human use, wildlife and plant monitoring, sanitation facilities, pet control, irrigation (possibly), appropriate closures and the ensuing enforcement to ensure the effectiveness of all of the above.*

Response:

The BLM acknowledges that new management requirements would be incurred as a result of the Proposed Action. However, the amount of increased management responsibilities would be addressed in the subsequent, site-specific management plan for the Non-Federal Parcels should the land exchange be approved. The \$1.1 million dollar donation included in the Proposed Action would offset the costs of any increased managerial responsibilities as the funds would be dedicated to covering the cost of developing a site-specific management plan for the Non Federal Parcels as well as for the costs of their long-term management. In effect, the BLM would be managing less public lands that are more consolidated/accessible as a direct result of the land exchange. The BLM anticipates both increased management responsibilities and abilities as a result of the proposed exchange. Better management is not necessarily simpler management.

**Anne Rickenbaugh**

**D-22**

**#128**

*Conformance of the proposed land exchange with the 1988 RMP is not as good as the EA states. “The proposed exchange would accomplish one of the...objectives of increasing the overall efficiency and effectiveness of public land management.” EA at 2-12. Under the no-action alternative, the BLM has only to review grazing permits every couple of years, whereas under the Proposed Action, the BLM would acquire a parcel it doesn’t currently own that would require very intensive, frequent, and on-going management efforts. (Refer to our comments on the Site Specific Management Plan.) This is inconsistent with increasing the efficiency and effectiveness of land management.*

Response:

The BLM acknowledges that new management requirements would be incurred as a result of the Proposed Action. However, the amount of increased management responsibilities would be addressed in the subsequent, site-specific management plan for the Non-Federal Parcels should the land exchange be approved. The \$1.1 million dollar donation included in the Proposed Action would offset the costs of any increased managerial responsibilities as the funds would be dedicated to covering the cost of developing a site-specific management plan for the Non Federal Parcels as well as for the costs of their long-term management. In effect, the BLM would be managing less public lands that are more consolidated/accessible as a direct result of the land exchange. The BLM anticipates both increased management responsibilities and abilities as a result of the proposed exchange. Better management is not necessarily simpler management.

**Anne Rickenbaugh**

**D-22**

**#129**

*“...[D]isposal of [Parcel A] is consistent with the exceptions outlined in Appendix D of the 1988 RMP that allows the disposal...through exchanges where the public value of the land that is acquired meets or exceeds the public value of the land that is disposed of.” Ibid. Several scoping comments noted the incomparable values between Parcel A and Parcel 1; the EA has not demonstrated that the public value of Parcel 1 is superior to that of Parcel A, only that the level of use on Parcel A is lower than would exist on Parcel 1 under the Proposed Action. (For discussion of the public values of Parcel A, see section entitled “The Values Of The Parcels In The Exchange Are Not Described Accurately.”) While Parcel A may meet the criteria in the RMP which would allow its disposal, since the parcel was not identified in that document as slated for disposal, it does not follow that the parcel should be disposed of. Moreover, it*

*does not absolutely meet all the criteria; the BLM has asserted a value judgment as to the enhanced public benefit of the non-federal parcels. Also, parcel 2 was willingly purchased by the proponent from the previous owner who tolerated both the trail construction and trespass.*

Response:

As discussed in Chapter 1 Section C – BLM Land Exchange Policies, the BLM is authorized to complete land exchanges under Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, after a determination is made that the public interest would be served. While the EA has discussed potential benefits and impacts of the proposed land exchange at length, the Decision Record (DR) would further document how the public interest would be served, should the Proposed Action be approved.

The commenter is correct in that “it does not follow that Parcel A *should* be disposed of.” However, the RMP does provide guidance that the parcel *could* be disposed of, which is what is discussed in the EA.

**Anne Rickenbaugh**

**D-22**

**#130**

*Standard 1: “The conservation easements and site-specific management plan...are expected to maintain or improve conformance with the standard. “ EA at 2-14. Absent a requirement to enforce the CEs and details of the proposed management plan, this expectation is unsupported.*

Response:

The future, site-specific management plan is only a concept at this time and therefore it is not, and cannot be, analyzed in detail in the EA. As noted in Chapter 3 Section S – Soils, the site-specific management plan would address management of soil resources and consistency with the RMP and the Standards for Public Land Health.

The BLM has determined that the conservation easements would adequately protect natural resources to be transferred out of public ownership. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action. Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land’s physical condition at the time of the easement’s grant, as well as the nature and condition of the conservation values being protected. After the easement has been granted, the Trusts’ monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts’ Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts’ action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary.

In addition, The BLM has determined that the Trusts are very likely to enforce the terms of conservation easements. A land trust that does not enforce an easement would lose not only accreditation and certification but also its 501 (c)(3) tax exempt status. If land trust staff determines that the terms of an easement have been violated, the Trusts would be required to take action.

**Anne Rickenbaugh****D-22****#131**

*Standard 2: “Through both voluntary and required actions on behalf of the BLM and grazing permittees the [Thomas] creek is moving towards meeting Standard 2.” Ibid. Again, there is no legal requirements under the CE to continue to take actions that would improve the ecological health of the creek and its riparian habitat.*

Response:

As noted in Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones, the conservation easements for Federal Parcels A and B are designed to protect the Conservation Values of these parcels, including riparian/wetland habitats, streams, and ponds. The easements would prohibit development of the parcels and they include special provisions to protect water resources. Specifically, they state that the Grantor shall not divert, dam, pollute, dredge, intentionally destabilize or degrade natural banks and shorelines, or otherwise alter Potato Bill Creek, Thomas Creek, or other naturally-occurring streams, springs, lakes, ponds, designated wetlands, or other surface or subsurface water features that may occur on the parcels without approval of the AVLTL.

In addition, the easements would require that a Grazing Management Plan be developed by a natural resource professional. Proper grazing management would be an important aspect of managing the riparian/wetland habitats on Parcels A and B. When the Grazing Management Plan for the conservation easements is developed, the new grazing system would likely be evaluated to determine if it is allowing some recovery of the riparian/wetland habitat along Thomas Creek on Parcel A or if additional changes are necessary. If effective, similar changes to grazing management could be incorporated into the management plan for Parcel B.

Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land’s physical condition at the time of the easement’s grant, as well as the nature and condition of the conservation values being protected. After the easement has been granted, the Trusts’ monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts’ Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts’ action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary. The BLM has determined the conservation easements would adequately protect riparian habitat on the parcels.

Additionally, in the official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Anne Rickenbaugh****D-22****#132**

*Standard 3: same comments as with Standard 1. (Standard 1: “The conservation easements and site-specific management plan...are expected to maintain or improve conformance with the standard. “ EA at 2-14. Absent a requirement to enforce the CEs and details of the proposed management plan, this expectation is unsupported.)*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. The future, site-specific management plan is only a concept at this time and therefore it is not analyzed in detail in the EA. It is reasonable to assume the site-specific management plan would address consistency with the RMP and the Standards for Public Land Health.

The BLM has determined that the conservation easements would adequately protect natural resources to be transferred out of public ownership. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action.

In addition, The BLM has determined that the Trusts are very likely to enforce the terms of conservation easements. A land trust that does not enforce an easement would lose not only accreditation and certification but also its 501 (c)(3) tax exempt status. If land trust staff determines that the terms of an easement have been violated, the Trusts would be required to take action. Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land's physical condition at the time of the easement's grant, as well as the nature and condition of the conservation values being protected. After the easement has been granted, the Trusts' monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts' Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary.

**Anne Rickenbaugh**

**D-22**

**#133**

*Standard 4 (id. at 2-14, 2-15): Harrington penstemon is a special status species which has been omitted completely from the conservation easements; privatization would preclude any BLM authority to manage for it.*

Response:

As noted in Appendix A, the conservation easements on Federal Parcels A and B require the Proponents to manage big game, habitat and vegetation on the Parcels according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels. It is expected this management plan would provide adequate protections for Harrington's penstemon. In addition, the conservation easements for Parcels A and B specifically mention Harrington's penstemon as part of the natural habitat conservation value to be protected.

**Anne Rickenbaugh**

**D-22**

**#134**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*The loss of the ability to manage for the maintenance of Land Health Standards 1-4, as the BLM would no longer have the authority to institute appropriate management practices.*

Response:

The commenter is correct in that the BLM would no longer manage resources on the Federal Parcels should the proposed land exchange be approved. However, the BLM has determined that the conservation easements would adequately protect natural resources to be transferred out of public ownership. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action. As noted in Appendix A, the Trusts would thoroughly inspect the parcels at least once a year to monitor compliance with, and otherwise enforce the terms of, the conservation easements. As discussed Chapter 2 Section E – Plan Conformance Review, the conservation easements are expected to maintain or improve conformance with each of the standards. The conditions that BLM uses to define land health are: upland soils, riparian, plant and animal communities, special status species, and water quality. Analysis of these topics can be found in Chapter 3, along with findings regarding land health conformance.

**Anne Rickenbaugh**

**D-22**

**#135**

*Under the no-action alternative, the BLM has the authority to ensure appropriate grazing management to protect wildlife, plant and water resources (and the ability to revoke the users' rights), restrict trail and road construction and use, impose wildlife closures, enact protections for archaeological and paleontological resources, and utilize the resources of the United States government to enforce all of the above. Implementation of the Proposed Action would revoke this authority.*

*As such, the Environmental Assessment should acknowledge the potential for these environmental impacts rather than rely on this simplistic assumption that a conservation easement will do everything that the United States government can do, particularly enforcement.*

Response:

The commenter is correct in that the BLM would no longer manage resources on the Federal Parcels should the proposed land exchange be approved. However, the BLM has determined that the conservation easements would adequately protect natural resources to be transferred out of public ownership. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action.

If land trust staff determines that the terms of an easement have been violated, the Trusts would be required to take action. Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. A baseline documentation report is created for each easement that describes the land's physical condition at the time of the easement's grant, as well as the nature and condition of the conservation values being protected. After the easement has been granted, the Trusts' monitoring consultants schedule annual visits to the property. As part of the monitoring visit, the monitor would thoroughly document a violation or potential violation with photographs, maps and a written report. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts' Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary.

Conservation easements are an effective and highly-regarded land conservation tool. There are numerous examples of federal, state, and local government programs that provide funding for conservation

easements with provisions similar to those contained in the conservation easements for the Non-Federal Parcels. Both the AVLТ and the EVLT, who would be the holders of the conservation easements on the Federal Parcels, are accredited by the national Land Trust Accreditation Commission. The accreditation seal is a mark of distinction in land conservation. It recognizes organizations for meeting national standards for excellence, upholding the public trust and ensuring that conservation efforts are permanent.

**Anne Rickenbaugh**

**D-22**

**#136**

*One thing for certain is that under public management, the uses on Sutey will change; the EA should provide more analysis of the impacts that could occur from this change. Thus, it is important to have some level of detail about the plan in order to analyze direct, indirect and cumulative environmental impacts from the Proposed Action. One could assume that the Plan would help to manage parking, specify some trail locations, include measures to manage for some wildlife, and that it will, in some fashion address the water resources on the properties. But there is no indication of how the agency will weight these priorities. That balance will affect the environmental impacts, and absent some direction, there is no way to undertake a meaningful analysis of what those impacts will be.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the future management plan would determine the appropriate balance between each of the considered resources through a rigorous planning process.

**Anne Rickenbaugh**

**D-22**

**#137**

*Management decisions with potential for major environmental impacts include:*

*Trail planning, construction and location, and policies about new trail development. Any trail construction has impacts to songbirds and small mammal populations. The environmental impacts of trail development cannot be fully understood without a detailed and well-considered plan. Unconsidered trail alignments can affect sensitive plant and animal communities; trail width has impacts as well by altering the connectivity of habitat for small species. Trail use at particular times of day or year can have impacts on large mammal species. Unplanned and unconnected trail construction would contribute to the cumulative environmental impacts of the Proposed Action. And the BLM seldom stops or restores unauthorized (bandit) trail construction, which can render the most careful trail development useless.*

*Dog management. The presence of dogs on-leash can impact the distribution of some animal communities. Dogs off-leash have even more significant impacts on the movements of many species, and can render otherwise suitable habitat unsuitable for some species. Should the management plan include restrictions on dogs, the lack of education and enforcement will have negative, indirect environmental impacts.*

*Whether to allow hunting. Prohibition of hunting allows for the "refuge effect," whereas allowing it can create additional management responsibilities. Also, if hunting is allowed, the selection of what species are hunted will have environmental impacts.*

*Vegetation Management. Because of the complex interplay of ecosystems, decisions on whether to undertake this activity and about what species to manage and how to manage them will have direct and indirect environmental impacts.*

Management of human waste. With high human use, as would be expected on parcel, management of human waste will be necessary. Depending on the degree of management needed, it could be expensive. The presence of human waste and any management to reduce it will have environmental impacts.

To maintain or abandon agricultural uses. This decision could have the single greatest effect on the future environment of the Sutey ranch. It will affect the user experience, the currently present wildlife species, the visual resources, and the water resources. Many people expressed an emotional attachment to historic agricultural use of the property.

Management of water resources. The decision to retain the water on the property or to put it back into Cattle Creek will have significant direct and indirect environmental impacts, some positive and some negative, but it will be necessary to analyze those impacts before making a value judgment as to what action is preferable.

Whether to allow and management of grazing. Allowing grazing would have positive cultural and economic impacts by continuing an historic practice on the ranch and providing opportunities to utilize a public resource. Improperly managed, it also has the potential for negative impacts on vegetation and water quality.

The frequency and intensity of wildlife, plant and user monitoring. Monitoring is an indispensable tool for land managers, as it helps them determine who and what are using the property; how, where, and when they are using it; and whether and how management activities are affecting both human and natural resources. It is time-consuming and expensive, but is the only way to assess on-going environmental impacts. Not undertaking it would result in unintended environmental impacts.

Commitment to Public Education. Although management is a necessary tool to reduce environmental impacts, a lot of people resent it. Environmental education programs can be very effective ways to demonstrate the intents and purposes of management decisions. They also encourage an intimacy with the property that encourages local stewardship and which has positive impacts, rather than requiring reliance exclusively on enforcement. However, these efforts take financial and human resources.

Enforcement policies and resources. None of the decisions described above makes any difference if the managing agency is not prepared to enforce them. People are creatures of habit, and once they become accustomed to using a property in a certain manner, it is very difficult to change their behavior. As noted above, decisions about how to manage and direct people and dogs have major environmental impacts, and actions contrary to those decisions must be discouraged. The BLM must present a realistic analysis of the resources that they can provide to do so

Response:

The commenter is correct in that management decisions on the Non-Federal Parcels could potentially have environmental impacts; however without the exchange there is no mechanism to protect the natural resource values on these parcels. While the degree of these impacts is unknown at this time, the site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan, which would adequately analyze and disclose the potential impacts of any future management decisions about the Non-Federal Parcels should the proposed land exchange be approved. These resource concerns are beyond the scope of this analysis and can only be addressed in a NEPA analysis of the future, site-specific management plan, once it has been developed.

**Anne Rickenbaugh**

**D-22**

**#138**

*Who will be responsible for all of the above? While it is reasonable to assume that the Red Hill Management Council will co-manage the Sutey property under a similar management as that for the Red Hill SRMA, the analysis should answer this question. Due to the intensive management activity that will be necessary to minimize environmental impacts, the EA should address the BLM's capability to undertake it.*

Response:

The specific management arrangement for Non-Federal Parcel 1 has not been decided at this time. However, as noted in Chapter 3 Section C – Recreation, the \$1.1 million dollar donation included in the Proposed Action would offset the costs of any increased managerial responsibilities as the funds would be dedicated to covering the cost of developing a site-specific management plan for the Non-Federal Parcels as well as for the costs of their long-term management. In effect, the BLM would be managing less public lands that are more consolidated/accessible as a direct result of the land exchange.

**Anne Rickenbaugh**

**D-22**

**#139**

*While it is understandable that the BLM cannot know all the details of the management planning absent a management planning process, it is reasonable to expect that it has a general sense of how it hopes to benefit the public in acquiring the properties. Therefore it is necessary to offer some indication of what their plans for the property, its resources, and all of the appurtenant rights are so the full impacts of the proposed exchange are known to the public and the agency's decision maker prior to approval, as NEPA requires. See 40 CFR 1500.1 (b).*

Response:

As noted in Chapter 2 Section C – Connected Actions, the future, site-specific management plan is only a concept at this time and therefore it is not analyzed in detail in the EA. Instead, the site-specific management plan is discussed and analyzed conceptually as a connected action to the Proposed Action. Information about the topics/resources that would be addressed by the plan that are known are disclosed in the EA. As noted in Chapter 2 Section C – Connected Actions, “At this time, it is reasonable to assume that the following resources/topics would be addressed in a future, site-specific management plan for the Non-Federal Parcels should these lands become federally managed: human presence, recreational use, continued grazing, wildlife habitat, and consistency with Resource Management Plan Land Health Standards.”

**Anne Rickenbaugh**

**D-22**

**#140**

*The BLM had no part in these negotiations and the assertion that it would like to acquire the parcel should acknowledge that this acquisition was never considered under any agency planning processes, and that their desire to acquire it stems simply from the fact that the proponents have offered it.*

Response:

As discussed in Chapter 1 Section E – Scope of the Analysis and in Chapter 4 Section A – Consultation and Coordination, the proposed land exchange was proposed by a non-federal party (i.e., the Proponents). The BLM reviewed the Proponents land exchange proposal against the current RMP, determined there was potential for public benefit, and then crafted its own Purpose and Need to describe the opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action.

The BLM does not conduct planning processes on private lands, and therefore has not specifically identified the Non-Federal Parcels for acquisition through an official planning process. The BLM has reviewed the proposed land exchange against the current RMP and has determined the acquisition of the Non-Federal Parcels would be consistent with the plan and would serve the public interest.

**Anne Rickenbaugh****D-22****#141**

*Absent any details about what the site-specific management plan might entail, it is impossible to analyze the effects, direct or indirect of the Plan itself or the Proposed Action. See section on Site-Specific Management Plan.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the site-specific management plan is “connected” to the Proposed Action; as defined, it “... will not proceed unless other actions are taken previously or simultaneously.” In this case, the “other action” is the Proposed Action. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, all environmental impacts of the future management plan would be analyzed and disclosed in that future NEPA process.

**Anne Rickenbaugh****D-22****#142**

*“It is reasonable to assume that the acquired water rights would be used for fish and or wildlife habitat improvements” on the non-federal parcels. EA at 3-135. The BLM would be required to manage both irrigated lands and storage water rights, or undertake the expensive and lengthy process of transferring the water rights to Colorado Water Conservation Board for instream flow/fish and wildlife habitat improvements. If this is done (under the as yet unwritten site-specific management plan), the BLM would lose the value of the “112.6 acres of prime farmland if irrigated soils” cited in the EA at p. 3-180.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Thus, the use of the acquired water rights, and the resultant impacts on prime farmland soils, is unknown at this time. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, all environmental impacts of the future management plan would be analyzed and disclosed in that future NEPA process. By acquiring the water rights in the exchange, all options for the use would be available for consideration. Without the exchange, BLM and the public would have little if any voice in how the water rights would be used in the future.

**Kara Heide****D-27****#143****Eagle Valley Land Trust**

*The completion of this land exchange benefits Eagle, Garfield and Pitkin Counties and aligns with BLM’s Colorado River Valley Draft Resource Management Plan, specifically Alternative C, by “sustaining relatively unmodified physical landscapes and natural and cultural resource values for current and future generation.”*

Response:

Comment noted.

**Ron Velarde**

**D-31**

**#144**

**Colorado Parks and Wildlife**

*CPW still recommends that the Sutey Ranch not be managed under the Red Hill Special Recreation Management Plan, and would like to emphasize the importance of the Sutey property as winter range to both deer and elk.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, including CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the BLM would welcome input on the future management plan from CPW staff.

**Ron Velarde**

**D-31**

**#145**

**Colorado Parks and Wildlife**

*Recreation pressures continue to increase on public lands both in user numbers and periods of use. Winter recreation on deer and elk winter range increases stress levels and can force animals into less suitable habitat, diminishing herd health. CPW recommends a winter use closure on the Sutey parcel from December 1 through May 15 to protect wintering wildlife. In addition, the creation of any new trails should be balanced by closing and reclaiming old trails to achieve no net loss of wildlife habitat. Permitted trails should prohibit motorized use and dogs should be leashed at all times to prevent unlawful harassment of wildlife.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, including CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the BLM would welcome input on the future management plan from CPW staff.

**Ron Velarde**

**D-31**

**#146**

**Colorado Parks and Wildlife**

*The acquisition of the Haynes (West Crown) parcel gives land managers the opportunity to create a controlled access point to the popular recreation area known as the Crown. CPW recommends full winter closures at access points to the Crown. This area supports large numbers of mule deer and elk throughout the winter and should be closed to all methods of travel from December 1 to April 15.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, including CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns including wildlife, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the BLM would welcome input on the future management plan from CPW staff.

**Fred Jarman****D-34****#147****Garfield County Community Development Department**

*Wildlife protection should be a priority on the Sutey Ranch and recreation access must be compatible with wildlife conservation.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Fred Jarman****D-34****#148****Garfield County Community Development Department**

*Garfield County supports the land exchange with the following principles in a management plan:*

- 1) Protecting and, enhancing wildlife and plant species as a top priority, Including seasonal or other closures of all or portions of the parcel to public use as may be determined appropriate In the planning process to protect wildlife and plant communities;*
- 2) Utilizing existing roads, ways or other areas on the parcel and to locate non-motorized trails to connect to adjacent or nearby public lands;*
- 3) Utilizing the 2.26 CFS of senior water rights appurtenant to the parcel to benefit fish and wildlife species on the parcel as well as to possibly augment stream flows In over appropriated Cattle Creek which is only a short distance downstream; and*
- 4) Assessing the historic significance and feasibility of preserving the historic nature of the Sutey cabin near the east end of the parcel.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM's strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Hawk Greenway****D-37****#149**

*This documents also makes the questionable assumption that getting rid of the thomas and potato bill allotments is in the public interest because they are "difficult to manage," yet the Thomas Creek allotment just went through an allotment management plan review and renewal without a single mention of its "difficult to manage" nature. In fact, it is the taking on of a private, irrigated ranch which is so difficult for the BLM to contemplate that they must have additional funds and managerial expertise brought in and paid for through the creation of a special management plan and paid for with a long term endowment.*

Response:

There is no mention in the EA that the canceling in whole of the Thomas and Potato Bill allotments would be in the public interest. As noted in Chapter 3 Section F – Livestock Grazing and Management, the cancelling of these allotments is in accordance with Section 206 of the Federal Land Policy and Management Act of 1976. Turnbull Land and Livestock, LLLP, who holds the grazing lease and preferences on the Thomas and Potato Bill Allotments also currently holds a grazing lease on the Proponent’s private lands of Two Shoes Ranch, which surrounds Parcel A. Under the Proposed Action, the BLM grazing lease would be cancelled and Parcel A would be incorporated into the Two Shoes Ranch. It is expected that grazing would continue on these lands through another private grazing lease, representing a no-change scenario for grazing on these lands.

**Hawk Greenway**

**D-37**

**#150**

*Page 3-6 the description of Parcel A and its inclusion in a disposal action is particularly egregious. It is not qualified for disposal by the BLM’s own criteria. It is not difficult to manage, having been used as a successful grazing allotment for many years without complaint by any of the parties involved. It is not difficult to access (for the grazing allotment operator), having the aforementioned 18 miles of roads, trails, and ATV routes on it. It does not create any trespass issues in and of itself, and the claimed trespass problems the exchange would solve have never been attempted to be solved by the simple expediency of posting the property involved (for example). The interest expressed in this exchange came from the proponent, not from the managing agency. Citing “management efficiency” as a reason to get rid of perfectly good BLM lands with high quality wildlife, riparian, and scenic habitat, lands which have been managed for generations as an integral part of the public landscape makes no sense. To trade such lands for private, irrigated land which requires entirely new managerial directions, expensive management planning and endowments is not “efficient.” It is a step backward for the BLM, an abdication of responsible management.*

Response:

As noted in Chapter 3 Section B – Access and Transportation, the routes mentioned by the commenter are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. (Note: motorized access to these routes requires crossing private lands owned by the Proponent, and using roads that are part of a private ranching system.) These routes are not part of the BLM’s travel management system and are used primarily for cattle and range management. The condition and use level of these routes varies greatly, with some receiving somewhat regular use during the grazing season while others are rarely used and are barely discernible in the field.

The isolated nature of these parcels does create management challenges for the CRVFO, as these lands do not connect to any other BLM lands and are difficult for the public to legally access. Isolated land parcels and lands with limited to no public access are two of the disposal considerations listed in the 1988 RMP for the CRVFO. The BLM recognizes that acquisition of the Non-Federal Parcels would create new management requirements for the field office; however, the \$1.1 million donation is expected to provide funds for the management of acquired Non-Federal Parcels into the future. The consolidation of both public and private land boundaries is expected to provide more efficient management, especially in terms of protection and enhancement of wildlife and recreation resources, but not necessarily fewer management requirements. Consolidation of land boundaries is recognized by the Federal Land Policy and Management Act of 1976 (FLPMA) as a means for providing more logical and efficient management. In addition, the wildlife and riparian habitat, as well as the scenic qualities, of the Federal Parcels would be protected by virtue of the conservation easements that are embedded in the Proposed Action.

**Gloria Wallace****D-54****#151**

*Some Very important points my family and I wish you to consider would be protection of wildlife and wildlife habitat, preservation of clean air and water, preservation of a historic ranch and open space, and closure of the ranch in the winter for wildlife protection. Recreational uses could be summer opening of the ranch so that hiking and biking trails could be extended to the BLM parcels at the North Side Loop. This trail hooks up to the Red Hill trail management system and we believe this would be a great benefit.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Gloria Wallace****D-54****#152**

*Allowing hunting on Sutey Ranch should not be permitted. There are many private homes surrounding the ranch and my concern is that stray bullets from hunting could end up endangering surrounding properties and people. Most nearby residents hike, snowshoe, and bike ride very close to the ranch and our concern is a stray bullet could kill. No hunting should be allowed on the property.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, hunting, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Gloria Wallace****D-54****#153**

*Motorized vehicles, camping and camp fires are issues that need to be addressed. We believe that the noise from motorized vehicles would be intrusive to wildlife habitat and neighbors. Camping permits should be considered during the summer season, but we would ask to ban campfires, as this area is very close to residential neighborhoods.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation (including motorized vehicles and camping), trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Davis Farrar**

**D-58**

**#154**

**Red Hill Council**

*The discussion of the minerals in the EA on pages 3-131 and 3-132 does not indicate that BLM would withdraw the minerals acquired from the Sutey Ranch. The SRMA for Red Hill specifies no surface occupancy for mineral extraction. Similarly, the Sutey Ranch should not be available for mineral extraction purposes, so BLM should take the extra step to eliminate mineral extraction as an option on the ranch because of its important wildlife, conservation and recreation characteristics.*

Response:

As discussed in Chapter 2 Section C – Connected Actions, the future management of the Non-Federal Parcels would be determined in a future, site-specific management plan. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, and mineral extraction, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan. Should the proposed exchange be approved, the commenter is encouraged to submit comments and suggestions for the management of the Non-Federal Parcels through this process.

**Davis Farrar**

**D-58**

**#155**

**Red Hill Council**

*The Red Hill Council looks forward to working closely with BLM and other agencies in preparing a management plan for the Sutey Ranch property. It is our belief that the environmental, wildlife and recreational values of these lands can coexist without detriment through a carefully considered planning process that incorporates broad-based public involvement and input. We look forward to being part of that public process.*

Response:

Comment noted. Should the proposed exchange be approved, the commenter is encouraged to be fully engaged in the site-specific planning process.

**Peter Looram**

**D-59**

**#156**

*I urge the BLM to work closely with Colorado Parks and Wildlife to produce a management plan that protects Sutey’s superb wildlife values.*

Response:

Should the proposed land exchange be approved, public input and collaboration with municipal agencies, including CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and parking, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan.

## 24.0 LAND EXCHANGE POLICIES

**Tom Cardamone**

**D-4**

**#157**

*In summary, even though the exchange surrenders more BLM acreage than it acquires, the net benefit to the land and wildlife is what really matters and is what should ultimately make the difference to BLM as decision-makers under FLPMA. The EA makes it clear that the proposed swap clearly meets all FLPMA tests for positive public benefit.*

Response:

Should the proposed land exchange be approved, the Decision Record would clearly outline impacts to public values, as described in the EA, along with a formal public interest determination, as required by FLPMA.

**Dave Lipe**

**D-8**

**#158**

*I believe that this will encourage other wealthy land owners to do the same thing elsewhere, so where does it stop?*

Response:

Land exchanges between private landowners and federal land management agencies (e.g., BLM and U.S. Forest Service) are relatively common and have been occurring for many decades. The proposed land exchange sets no new precedent for future land exchanges. Each exchange stands on its own merits.

**Karen Kean-Hines**

**D-18**

**#159**

*As a former Ohioan and knowing Wexner, I personally find it obscene that this man is to be given such a huge amount of acreage for his land exchange. Public land owned by the people. I personally feel this is a terrible lack of guardianship of public lands by the very agencies set up to protect them.*

Response:

As discussed in Chapter 1 Section C – BLM Land Exchange Policies, the Federal Land Policy and Management Act of 1976 (FLPMA) requires the BLM to consider the monetary value of exchanged federal and non-federal lands. In land exchanges (which are common) the acreages of the federal and non-federal lands involved are typically not equal. The monetary value of the federal and non-federal exchange parcels is determined through an appraisal to determine their fair market value. Thus, given the numerous appraisal considerations, were the acreages of the Federal and Non-Federal Parcels equal, the monetary values would not be equal.

**Anne Rickenbaugh**

**D-22**

**#160**

*EA at 1-4 states: "When considering the public interest, the...BLM...shall give full consideration to" the following three factors: ...*

*3. Securing important resource management objectives including, but not limited to protection of fish and wildlife habitat, riparian habitat. River frontage, cultural resources, recreation opportunities, watersheds, open space and consolidation of lands. The Proposed Action results in less fish and wildlife habitat through the loss of suitable bighorn and turkey habitat (not present on Sutey), stream frontage (Thomas, Potato Bill, and Bruce and Salt Creeks); lands containing populations of a sensitive plant; 13 cultural sites on Parcel A; geology with the potential for high fossil presence; and all of the recreational opportunities enumerated under 1 above. (EA, chapter 3; see also our comments' sections on Wildlife and*

*Plants). As for consolidation of lands, a more appropriate characterization would be expansion of public lands in a different location. The Proposed Action would expand the Red Hill SRMA; however, it does not connect it to other public lands (Fischer Creek) on that side of Highway 82. While Parcel A is not connected to other BLM lands, it is connected to USFS lands.*

Response:

The consolidation of land refers to the creation of fewer public/private land boundaries. The exchange of the Federal Parcels would remove numerous public/private land boundaries, as would the acquisition of the Non-Federal Parcels. This consolidation of land boundaries is expected to provide more efficient management, especially in terms of protection and enhancement of wildlife and recreation resources. Consolidation of land boundaries is recognized by the Federal Land Policy and Management Act of 1976 (FLPMA) as a means for providing more logical and efficient management. Should the proposed land exchange be approved, the Decision Record would clearly outline impacts to public values, as described in the EA, along with a formal public interest determination.

The commenter is correct in that BLM boundaries would not be consolidated in the Red Hill area; however, BLM lands would be expanded in the area with the potential for incorporation into the Red Hill SRMA, as determined under the future, site-specific management plan.

It is important to note that many of the public values of the Federal Parcels mentioned in this comment, including fish and wildlife habitat, stream frontages, cultural sites, and geologic/fossil resources would not be “lost” to the public, rather they would be transferred out of federal ownership. These resources would be protected, in perpetuity, under the conservation easements and would continue to provide public benefits.

**Anne Rickenbaugh**

**D-22**

**#161**

*The Biological Resources Summary Report (Western Ecological et al., May 2012) accompanying the EA highlights at least two potential inequities in the proposed exchange.*

*According to the report, primary federal parcel A, which would be traded into private ownership, boasts a diverse, extensive, and healthy array of native vegetation, wildlife populations, and wildlife habitat. These features include several perennial streams, enhanced wildlife habitat, and diverse native species of vegetation ranging from mountain shrubland and sagebrush shrubland to Douglas fir and aspen. The parcel also includes rare Harrington penstemon. It also includes extensive healthy expanses of riparian habitat (while some portions have been impacted by livestock grazing, the majority are protected from those impacts and boast extensive native species of vegetation.*

*Meanwhile primary private parcel (Sutey Ranch) is characterized in the report as generally agricultural and subjected to extensive human alteration, with native understory of vegetation eliminated. The parcel includes some riparian habitat and wetlands, the report indicates that “...Heavy grazing...has eliminated the wetland vegetation from the groundwater discharge area...The ground has been trampled, making it difficult to determine if the discharge would have a defined channel...There is no water in the stream channel upstream of the spring/seep discharge...”*

Response:

The BLM recognizes that differing resource values exist on the Federal and Non-Federal Parcels, as enumerated throughout the EA. Should the proposed land exchange be approved, the Decision Record would clearly outline impacts to public values, as described in the EA, along with a formal public interest determination.

**Hawk Greenway****D-37****#162**

*section N, pages 3-127 – page 3-131 states there is no potential for oil and gas drilling near the “highly stressed and fractured igneous plutonic stock of quartz monzonite and granodiorite.” The publicly owned parcels are “unlikely to be leased” for oil and or gas drilling. This removes the threat of development entirely from these public parcels, removes the need for the C.E.’s, and removes any justification for this exchange to go forward.*

Response:

Although mineral development is unlikely to occur on the Federal Parcels under BLM management, the Federal Parcels could be leased for mineral and/or energy development per BLM regulations. The past decade has shown that advances in technology have allowed for oil and gas drilling to occur in formations previously thought to be uneconomical or impossible to extract hydrocarbons from. Preventing mineral development on the Federal Parcels is not part of the Purpose and Need for Action. Protecting the Federal Parcels from development, and thereby protecting natural resources and wildlife habitat, through the conservation easements is a consideration of the proposed land exchange. As noted in Chapter 1 Section D – Purpose and Need for the Proposed Action, the purpose and need for the proposed Sutey Ranch Land Exchange is two-fold:

1. Consolidate land ownership boundaries (private and BLM) in the Red Hill (Garfield County), Crown (Pitkin County) and Horse Mountain (Eagle County) areas.
2. Improve management of, and public access to, public lands under the jurisdiction of the BLM while minimizing public trespass on adjacent private lands.

Achieving the goals of the Purpose and Need for Action would be the primary justification for the land exchange to approved, following a formal public interest determination in the Decision Record.

**Hawk Greenway****D-37****#163**

*The “Non-monetary” values of the federal parcels vs the values of the private parcels. The EA cites, as justification for including the non-disposal parcel A in a disposal action, the “public value of the land that is acquired meets or exceeds the public value of the land that is disposed of.” Then it continues “The Non-Federal parcels have non-monetary values (i.e., recreation, habitat, watershed, etc.) that are of public value, as discussed throughout this EA.” This is a rather astounding claim, as the document goes on to show, in each category cited, how the exchange does not meet this standard at all, but rather the opposite. Miles of riparian habitat, acres of mule deer habitat, migratory bird habitat, no matter the metric, each value cited is a loss to the public in this lopsided exchange.*

Response:

The EA has demonstrated the public values of the Federal and Non-Federal Parcels. Should the proposed land exchange be approved, the Decision Record would clearly outline impacts to public values, as described in the EA, along with a formal public interest determination.

**John J. McCormick****D-56****#164**

*Steve Bennett, BLM field manager, was quoted recently in the Aspen Daily News (April 30), stating: “The BLM will only complete a land exchange if it is in the public’s interest.” In what universe is this exchange in the public’s interest?*

Response:

As discussed in Chapter 1 Section C – BLM Land Exchange Policies, the BLM is authorized to complete land exchanges under Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, after a determination is made that the public interest would be served. Should the proposed land

exchange be approved, the Decision Record would clearly outline impacts to public values, as described in the EA, along with a formal public interest determination.

## 25.0 LAND USE

**Sandra Aldersea**

**D-9**

**#165**

*The story says they will give up development rights to 10 homes but in what area? Do you really think that the land owner would ever want to build 10 homes on his land?*

Response:

As noted in Chapter 2 Section C – Connected Actions, the Proponents have ten vested single family development rights acquired during the Crystal Valley Ranch subdivision and approval for an indoor riding arena which, if developed, would have a noticeable visual impact from the Highway 133 visual corridor. Pitkin County thought the elimination of ten sites was beneficial and put it into their negotiated agreement with the Proponents. Should the proposed land exchange be approved, the Proponents have voluntarily agreed to extinguish the ten vested single family development rights, totaling 50,000 square feet of potential development, which would result in substantial amounts of land remaining undisturbed and undeveloped. The Proponents have also agreed to move the approved indoor riding arena to a less visually prominent location if, and when it is built.

**Anne Rickenbaugh**

**D-22**

**#166**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*The potential for future development through an amended conservation easement.*

Response:

The BLM has determined that the conservation easements would adequately protect the resource values of the Federal Parcels. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action. Amending the conservation easements is not reasonably foreseeable and beyond the scope of this analysis.

However, according to the AVLT Amendment Policy and Procedure, Amendments to conservation easements are rare and are granted only after the AVLT staff and Board of Directors determine the proposed changes meet the criteria established in the organization’s Amendment Policy. The Amendment Policy directs:

“Any amendment must honor the conservation values of the property burdened by the original easement and comply with the intended purpose of the original easement. Accordingly, any amendment must either enhance or have neutral impact on the conservation values of the property, or, if appropriate, add a new conservation purpose to the easement if consistent with grantor’s, but shall not permit any negative impacts to the conservation values. Any amendment proposed for consideration must meet one or more of the following criteria:

- To clarify an error or ambiguity or unforeseen circumstance;
- To strengthen the purposes or long-term viability of the easement;
- When the circumstances of the property have changed through force of nature so greatly as to render the purposes of the easement non-existent.”

According to the EVLT, “an amendment must have either a beneficial or neutral effect on conservation values protected by the conservation easement. Furthermore, the requested modification must be

consistent with the goals of the Trust and must not undermine the Trust's obligation to monitor and enforce the easements.

"No amendment will provide private inurement for members of the Board or staff of EVLT, or private benefit to other parties as prohibited by IRS Regulations.

"Conservation easements may be amended under the following circumstances:

3. To allow implementation of agreements specified in the conservation easement,
4. To correct an error in original drafting; for example:
  - a) To correct a legal description (survey description),
  - b) To correct errors in conservation easement exhibits,
  - c) To include exhibits inadvertently omitted,
  - d) To correct basic typographical or clerical errors and/or omissions.
5. To clarify an ambiguity in the conservation easement and/or to cause the agreement to conform to the intent of the parties,
6. To adjust a conservation easement to acknowledge a condemnation by a public agency,
7. To add new provisions that strengthen the preservation and protection of conservation values."

**Peter F. Runyon**

**D-23**

**#167**

**Eagle County Board of Commissioners**

*When we first contacted you in 2009, there was an application pending from a private landowner to acquire a right-of-way over Federal Parcel C in order to build an access road to lands he holds on Horse Mountain. It was feared by the community that both the road and any housing he would build on the mountain could severely compromise the visual integrity of Horse Mountain, which can be seen from Interstate 70 and many parts of Eagle, Eagle Ranch and the Brush Creek valley. Horse Mountain is a prominent landmark for us, and should be preserved in its current natural state.*

*Happily, at that time in 2009, the nearby Lady Belle Ranch stepped forward to indicate that they were willing to acquire Parcels C, D and E in a land exchange at full appraised market value, and to thereafter donate a conservation easement on all three parcels to the Eagle Valley Land Trust. Ultimately, parcels C, D, and E were included in the Sutey Ranch land exchange and we have been encouraging its approval ever since.*

Response:

Comment noted.

**Delia Malone**

**D-41**

**#168**

**Crystal River Caucus**

*As you may also be aware, the Wexners only purchased the West Crown parcel after efforts by Pitkin County to purchase it stalled, so it is no exaggeration to say that this was a very positive development for the public.*

Response:

Comment noted.

**Clark Anderson**

**D-45**

**#169**

**Sonoran Institute**

*A major reason for our support for the land exchange is that it will prevent the subdivision of the beautiful Sutey Ranch on Missouri Heights near Carbondale. Preservation of the Sutey Ranch in BLM ownership is even more significant because it directly abuts your 3000 acre Red Hill Special Recreation Management and its acquisition will form a block of land more than 3,500 acres in size that will remain undeveloped in the future. As you are aware, the area around Carbondale and Missouri heights is experiencing rapid growth, which leads to an increase in traffic, human usage and wildlife habitat fragmentation. It is, therefore, increasingly important to protect blocks of land where wildlife can prosper with a minimum of human disturbance during important winter, breeding and shoulder season months. If the Sutey Ranch is developed with dozens of homes, as permitted by Garfield County zoning, the EA eloquently discusses the adverse impacts it will have on the environment and wildlife populations.*

Response:

Comment noted.

**Clark Anderson**

**D-45**

**#170**

**Sonoran Institute**

*In addition, a separate conservation easement on Two Shoes existing private land will protect another 365 acres, and the two easements combined will link with 1000+ acres of conservation easements that already exist. All told, AVLT will end up holding a block of 2700 acres of conservation easements on the unified Two Shoes Ranch.*

Response:

Comment noted.

**Robert F. McKenzie**

**D-48**

**#171**

*As you know, there has been mineral development in this area in the past and it has resulted in private land ownership on patented mining claims that abut Parcels C & D. The private claim owners applied to BLM for a road across Federal Parcel C to access the upper portion of their claims. Such a road across federal land was unnecessary; access to upper land can be made from their lower privately held claims keeping all potential development self-contained on private lands. Granting a BLM right-of-way would likely have made those private claims even more developable than they now are.*

Response:

Comment noted.

**Davis Farrar**

**D-58**

**#172**

**Red Hill Council**

*Protection of the Sutey Ranch has been a priority of the Red Hill Council for at least a decade. We have pursued a variety of options to protect this important property that included discussions with Aspen Valley Land Trust, Garfield County and support for a Garfield County open space program. Unfortunately, none of these options offered a solution to protect the ranch. The proposed Sutey/Wexner/Horse Mountain exchange surfaced as the only viable option.*

Response:

Comment noted.

## 26.0 HISTORIC/CULTURAL

**Anne Rickenbaugh**

**D-22**

**#173**

*The reliance on conservation easements to protect the lands that would become private under this proposal leaves the potential for environmental impacts not addressed in the EA. These potential impacts include:*

*The archaeological resources identified in Chapter 3, section G of the EA as there would be no consequences for damaging or removing them.*

Response:

As noted in Chapter 3 Section G – Cultural Resources, none of the previously recorded or new sites within the project area, or within 1 mile of the project area, were found to be eligible for the National Register of Historic Places (NRHP). As no eligible cultural resources were located in either of the Class III inventories, a determination of “no historic properties affected” was recommended by the cultural resource inventory reports. The 12 recorded or new cultural resources identified included 11 isolated finds (e.g., flakes, can scatter, blue enamel bowl, etc.), which were not removed, and one recorded site, the Lewis Ditch.

Also noted in Chapter 3 Section G – Cultural Resources, the private ownership of the Federal Parcels would eliminate the already limited public access, thereby increasing protections from vandalism and unauthorized collection of known or unidentified cultural resources. The conservation easements that would cover the Federal Parcels (except the 1-acre Parcel B-1) under the Proposed Action limit development, grazing, recreation, mineral extraction, and other ground-disturbing activities. This limitation would help protect cultural resources.

**Anne Rickenbaugh**

**D-22**

**#174**

*Cultural Resources: preserving the historical aspect of agriculture, either irrigated private or public access to grazing was mentioned in several comments, yet this section of the EA does not address either aspect of this issue.*

Response:

As noted in Chapter 3 Section G – Cultural Resources, cultural resources are features with valued archaeological, historic, and socio-cultural properties as outlined by the National Historic Preservation Act (NHPA). Livestock grazing and agriculture, although part of the local history and culture of the Analysis Area, are not considered cultural resources by this definition. Instead, livestock grazing is analyzed in Chapter 3 Section F, and Soils are analyzed in Chapter 3 Section S. Farmlands, Prime or Unique were determined to be a non-issue because the only Prime or Unique Farmlands involved in the exchange would come under BLM management and the BLM would be able to protect these resources under the proposed exchange. As noted in Chapter 3 Section F – Livestock Grazing, the Proposed Action would not substantially impact range management or existing grazing rights on Federal or Non-Federal Parcels considered in the exchange.

The BLM recognizes that there is public concern for continuing agriculture on Non-Federal Parcel 1; however, the decision to allow this activity would not occur until the development of the site-specific management plan for the parcel. Should the proposed land exchange be approved, public input and collaboration with municipal agencies, such as local governments and CPW, would be a key part of developing a site-specific management plan that would address all BLM planning concerns such as recreation, trail building, public access, wildlife, water rights and usage and farmlands, among others. The site-specific management plan would be developed within a framework of applicable laws, policies, NEPA analysis, public participation, and BLM’s strategic plan.

**Anne Rickenbaugh**

**D-22**

**#175**

*Twelve cultural resources were previously recorded within 1 mile of the Federal Parcels in Pitkin County (A, B, and B-1), but only nine are within the APE. The most recent survey located four new cultural resources, Three were isolated finds and one stone pile and alignment (likely modern). EA at 3-57.*

*The term “likely” leaves open the possibility that this is a significant archeological find, it is impossible to tell from the EA document (no photo was published). The EA should include a more detailed discussion of the findings of any studies. Recently, Pitkin County assisted a nearby landowner with protecting an 11,000 year old significant site in similar terrain. This stone pile and alignment could be a dwelling, a “henge,” or a similar 11,000 year old hunting campsite site. Without further study and reporting we will not know.*

Response:

Following the completion of the Class III cultural resources inventory for Parcels A, B and B-1, upon which the cultural resources analysis in the EA is based, ERO Resources completed field investigations specifically related to this site.

Reevaluation of the site occurred on May 11, 2012. ERO archaeologists Sean Larmore and Kathy Croll were accompanied by Ian Carney, Two Shoes Ranch manager, Pitkin County Deputy Sheriff Jeff Lumsden, and Michael Buglione, deputy coroner for Pitkin County. The center of the cairn was exposed to determine whether evidence for a human burial was present. Although a single bone was found within the cairn, the bone was determined to be from a small mammal and not of human origin. Both the sheriff and coroner were satisfied with the methods and results of the investigation. This reevaluation confirmed the determination in the Class III cultural resources inventory of “no historic properties affected.”

**Anne Rickenbaugh**

**D-22**

**#176**

*Under the Proposed Action, the land exchange would not have any direct, indirect, or cumulative effects on identified cultural resources in the APE. EA at 3-58.*

*The lack of information published in the EA does not support this assertion. Federal law provides legal protections to the cited cultural resources, but these protections would be lost if the lands are exchanged.*

Response:

As noted in Chapter 3 Section G – Cultural Resources, Chapter 1 Section 06 of the National Historic Preservation Act (NHPA) of 1966 requires that federal agencies take into account the effects of a federal undertaking on any cultural resource that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). As no eligible cultural resources were located in either of the Class III inventories, a determination of “no historic properties affected” was recommended by the cultural resource inventory reports.

Furthermore, also noted in Chapter 3 Section G – Cultural Resources, the private ownership of the Federal Parcels would eliminate the already limited public access, thereby increasing protections from vandalism and unauthorized collection of known or unidentified cultural resources. The conservation easements that would cover the Federal Parcels (except the 1-acre Parcel B-1) under the Proposed Action limit development, grazing, recreation, mineral extraction, and other ground-disturbing activities. This limitation would help protect cultural resources.

**Hawk Greenway**

**D-37**

**#177**

*Cultural sites (3-57) the document sites “one stone pile and alignment (probably modern) amid thirteen cultural sites. Is this the equivalent of finding a Ute-era stonehenge or a Terry Paulsen Burnt Mtn medicine wheel? How would you know without better reports? This is totally an inadequate study and*

reporting. These federally owned artifacts and sites are currently under federal legal protections, all of which would be lost if they lands become private. Removing legal protections for unstudied artifacts and stone alignments is not good management. Recently, Pitkin County helped negotiate protection for a very significant site a few miles away in similar terrain. This may be referencing a similar, significant site. It is impossible for the public, including archeologists, to say given the paucity of information released in this inadequate report.

Response:

Following the completion of the Class III cultural resources inventory for Parcels A, B and B-1, upon which the cultural resources analysis in the EA is based, ERO Resources completed field investigations specifically related to this site.

Reevaluation of the site occurred on May 11, 2012. ERO archaeologists Sean Larmore and Kathy Croll were accompanied by Ian Carney, Two Shoes Ranch manager, Pitkin County Deputy Sheriff Jeff Lumsden, and Michael Buglione, deputy coroner for Pitkin County. The center of the cairn was exposed to determine whether evidence for a human burial was present. Although a single bone was found within the cairn, the bone was determined to be from a small mammal and not of human origin. Both the sheriff and coroner were satisfied with the methods and results of the investigation. This reevaluation confirmed the determination in the Class III cultural resources inventory of “no historic properties affected.”

**27.0 ACCESS TO PUBLIC LANDS**

<b>Paul Andersen</b>	<b>D-2</b>	<b>#178</b>
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*This parcel is in fact not difficult to access. It comes within a couple hundred feet of Prince Creek road at the lowest point. All you need is a short easement for a trail.*

Response:

As noted in Chapter 2 Section D – Alternatives and Concepts Considered but Eliminated from Detailed Analysis, this alternative is beyond the scope of analysis as the concept of trail easement was not acceptable to the Proponent and the BLM does not have the authority to invoke eminent domain at the level of decision on this project.

<b>Paul Andersen</b>	<b>D-2</b>	<b>#179</b>
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*This parcel is the only piece of public land from Sopris Mountain Ranch to Highway 133. By trading it you have locked the entire area to hunters and hikers.*

Response:

As noted in Chapter 3 Section C – Recreation, a private recreational agreement with neighboring landowners would allow for continued recreational (hiking) access to Parcel A for these owners. In addition, hunting and the leasing of hunting rights on Parcels A and B would be permitted under the conservation easements, and may include guided hunting for youth, veterans and disabled individuals per an agreement with CPW. Significant lands within the White River National Forest in between Sopris Mountain Ranch and Highway 133 would remain in public ownership and open to hunting by the public. Also discussed in Chapter 3 Section C – Recreation, public recreation opportunities on the Federal Parcels, including hunting and hiking, would be displaced under the Proposed Action and new, more accessible, public recreation opportunities would be provided on the Non-Federal Parcels. Hunting would still be provided on nearby BLM lands in the Crown.

**Ed Jenkins**

**D-7**

**#180**

*I do however believe public access to mount sopris from nettle creek should be part of the deal. An access/trail should continue.*

Response:

The issue of access in the Nettle Creek watershed is beyond the scope of analysis for this Proposed Action and would not address the Purpose and Need. The creek is located on USFS managed lands south of the Proposed Action. Access in this area is addressed through the WRNF travel management plans.

**James A. Wingers**

**D-10**

**#181**

*It would no longer be able for the public to access the land west and south of Dinkle Lake, as Mr. Wexner would own it.*

Response:

As demonstrated on Figure 3 of the EA, the land west and south of the Dinkle Lake Trailhead (and Dinkle Lake itself) is part of the White River National Forest (WRNF). The Proposed Action would not affect access to any land within the boundaries of the WRNF. Federal Parcels A, B and B-1 are west and north of the of the Dinkle Lake area.

**James A. Wingers**

**D-10**

**#182**

*The biggest problem with the trade is the fact that Mr. Wexner will be able to cut off the easiest access to the north side of MT. Sopris.*

Response:

As noted in Chapter 3 Section B – Access and Transportation, Parcels A, B and B-1 do not currently provide access to the summit of Mount Sopris because each of the Parcels is bordered by private land north and/or south of them. The only legal public access to Parcel A is from the WRNF on the southern border of the Parcel, from which hikers would travel south to Mt. Sopris; not north into Federal Parcel A. The primary legal public access to Mount Sopris is provided via the Mount Sopris Trail on the WRNF. The trailhead for this trail is located at Dinkle Lake (refer to Figure 3). Access to Mount Sopris is also provided off of Avalanche Creek Road.

**A Carbondale Citizen**

**D-20**

**#183**

*The BLM land that would be traded away is not as inaccessible as it has been portrayed, and blocks one of the few remaining public access points to Mt. Sopris.*

Response:

As noted in Chapter 3 Section B – Access and Transportation, Parcels A, B and B-1 do not currently provide access to the summit of Mount Sopris because each of the Parcels is bordered by private land north and/or south of them. The only legal public access to Parcel A is from the WRNF on the southern border of the Parcel, from which hikers would travel south to Mt. Sopris; not north into Federal Parcel A. The primary legal public access to Mount Sopris is provided via the Mount Sopris Trail on the WRNF. The trailhead for this trail is located at Dinkle Lake (refer to Figure 3). Access to Mount Sopris is also provided off of Avalanche Creek Road.

**Anne Rickenbaugh****D-22****#184**

*The document states: “Public use of Parcel A is relatively low given the difficult access and lack of trails and established recreation activities.” EA at 3-9. However, by local standards, the 1,000 foot vertical gain (EA at 3-20) is an easy walk from the Nettle Creek Crystal portal, on a well established and well maintained trail system.*

Response:

As noted in Chapter 3 Section C – Recreation, the only legal public access to Parcel A is a circuitous, non-motorized route from the WRNF on the more remote southern border of the parcel, where the topography is steep. There are no designated Forest Service or BLM roads or trails in the vicinity, so this access route involves off trail travel and the use of game trails and user-created trails, which are unsanctioned trails that have been built, and used by, the public and are not part of the WRNF or CRVFO travel system. As noted in Chapter 3 Section B – Access and Transportation, although some user-created trails have been cleared and marked leading into Parcel A from the south in the WRNF, these trails are not part of the WRNF or CRVFO long-term trail system and are not included in the WRNF or CRVFO Travel Management Plan. The BLM has no existing or proposed travel system roads or trails on Parcel A or within the vicinity.

**Anne Rickenbaugh****D-22****#185**

*The benefits of acquiring parcel 2, to ensure public access to the Crown and eliminate trespass (EA at 3-28, 3-29), are overstated. There is already plenty of access to the Crown, from Prince Creek Road and from the east. rd. at 3-27. Acquiring this parcel would also legitimize the illegal trail building that has occurred, primarily by mountain bikers.*

Response:

As noted in Chapter 3 Section C – Recreation, Prince Creek Road provides direct motorized access to Parcel 2. User-created trails exist on the parcel and lead into The Crown’s trail network, providing extensive, non-motorized access to BLM lands. Although The Crown can be accessed from the east, a popular public access point is through Parcel 2 and Prince Creek Road.

Pitkin County sees benefits to providing additional trails, trailheads, and public access in the Prince Creek Road area as shown by its work to create a new trailhead and trail on Tybar Ranch and the agreement it negotiated with the Proponents to provide funding for the Tybar project.

**Anne Rickenbaugh****D-22****#186**

*The private Thomas Road/Lewis Lake Road leads to approximately 18 miles of motorized routes on Parcel A, including ATV trails, two-tracks and unimproved dirt ranch roads.*

*The road and trail system referred to here should also be enumerated in other descriptions of Parcel A, including its description in 1.B – Project Location and Description and 3.C.Recreation.*

Response:

The routes mentioned by the commenter are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. (Note: motorized access to these routes requires crossing private lands owned by the Proponent, and using roads that are part of a private ranching system.) These routes are not part of the BLM’s travel management system and are primarily used for cattle and range management. The condition and use level of these routes varies greatly, with some receiving somewhat regular use during the grazing season while others are rarely used and are barely discernible in the field.

As these routes are not part of the BLM travel management system open to public travel, and provide minimal if any public recreation opportunities, they are not discussed in detail in the recreation analysis of the EA. Other than the potential trail connections on Non-Federal Parcels 1 and 2, none of the existing motorized or non-motorized routes are discussed in Chapter 1 Section B – Project Location and Legal Description.

**Anne Rickenbaugh**

**D-22**

**#187**

*Also, there is an unmentioned access to Parcel A through the Prince Creek subdivision. Currently, as adjacent landowners, the residents of the Prince Creek subdivision are free to recreate on Parcel A and to invite the public to do so.*

Response:

Although landowners can access Parcel A through their adjacent private land, this is not a public access point and is not discussed in the EA. The Prince Creek Subdivision landowners have not allowed the public the use their private land to access Parcel A in the past and it is not likely they would do so in the future.

**Anne Rickenbaugh**

**D-22**

**#188**

*The current access from Parcel 2 exists through recent illegal bandit trail building. It is not historic.*

Response:

As noted in Chapter 3 Section C – Recreation, Prince Creek Road provides direct motorized access to Parcel 2. User-created trails exist on the parcel and lead into The Crown’s trail network, providing extensive, non-motorized access to BLM lands. Although The Crown can be accessed from the east, a popular public access point is through Parcel 2 and Prince Creek Road. Access to The Crown through Parcel 2 has been occurring for years.

**Anne Rickenbaugh**

**D-22**

**#189**

*Despite the thorough description below of the Non-Federal Parcels, the last paragraph on p. 3-14 says nothing about Parcel A, which according to the Affected Environment section of the EA, is home to an 18 mile trail system (p. 3-9) as well as trail connections to the White River National Forest.*

Response:

The paragraph referenced by the commenter is a summary paragraph of effects described in more detail below.

As noted in Chapter 3 Section B – Access and Transportation, the 18 miles of routes are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. (Note: motorized access to these routes requires crossing private lands owned by the Proponent, and using roads that are part of a private ranching system.) These routes are not part of the BLM’s travel management system; however, if Parcel A is accessed by foot (the only legal public access to Parcel A is a circuitous, non-motorized route from the WRNF on the more remote southern border of the parcel, where the topography is steep and involves off trail travel and the use of game trails and unsanctioned, user-created trails that are not part of the WRNF or CRVFO travel system) these routes may be used by the public for non-motorized and non-mechanized use. Although some user-created trails have been cleared and marked leading into Parcel A from the south in the WRNF, these trails are not part of the WRNF or CRVFO long term trail system and are not included in the WRNF or CRVFO Travel Management Plan. The BLM has no official (i.e., part of the travel management system) existing or proposed roads or trails on Parcel A or within the vicinity.

**Anne Rickenbaugh****D-22****#190**

*Concerning the indirect effects of conservation easements on the federal parcels, the terms of the conservation easements would restrict the neighbors' rights to recreate on Parcel A to foot-travel only, allow travel only within a specified area, limit use to daytime, and restrict the residents' current rights to invite the public to cross their property to access Parcel A ("Agreement between Two Shoes Ranch and Prince Creek Subdivision Landowners," p. 3. Moreover, the EA should include this agreement as an attachment.)*

Response:

The agreement referenced by this comment is a private agreement voluntarily entered into between private parties. The agreement is mentioned in Chapter 3 Section C – Recreation, in regards to recreational access on Parcel A if the Proposed Action is approved.

**Hawk Greenway****D-37****#191**

*Page 3-190 asserts an "improved legal access to public lands if the exchange goes through," and improved recreation. They totally discount any existing legal access to the crown, they discount entirely the legal access for hikers to the A parcel, and they cite solving public trespass as improved legal access, however, the trespass they cite, on Parcel b, is not actually a trespass since it is open and above board, and done with the full knowledge and permission of both the previous owner and the current owner.*

Response:

The referenced statement pertains to the cumulative effects analysis of recreation and is supported by the entire recreation analysis contained in Chapter 3 Section C of the EA. Legal access to The Crown, Parcel A and Parcel B is thoroughly discussed in Chapter 3 Section B – Access and Transportation and Section C – Recreation. There is currently no legal public access across Parcel 2. Public use of Parcel 2 to reach The Crown is provided at the option of the private landowner (the Proponents) and could be rescinded at any time.

**Hawk Greenway****D-37****#192**

*The document claims trespass issues would be solved by this exchange. There were no trespass issues documented. There are no logs of law enforcement officers called, or citations issued to support claims of trespass. There are public uses of private lands, by permission of the owners. The proponents have purchased private lands traversed by the public (with owner permission) and added them to this land exchange, and have allowed the public use of those properties to continue. This is not trespass, nor are the public lands accessed by these user-built trails ONLY accessible through this parcel. To claim an increase in public access by turning this small acreage public is simply a falsity. The crown will remain a much loved public recreational destination without the few trails afforded by the parcel 2.*

Response:

As noted in Chapter 3 Section B – Access and Transportation, user-created trails exist on Parcel 2 and lead into The Crown's trail network, providing extensive, non-motorized access to BLM lands. The EA acknowledges that there are numerous other public access points to The Crown, but also that Parcel 2 serves as a popular access point nonetheless.

Chapter 3 Section B – Access and Transportation, goes on to explain that federal acquisition of Parcel 2 would protect existing trail connections the public uses to access The Crown and would provide an opportunity to develop a public trailhead at The Crown’s popular access point off Prince Creek Road. The EA does not claim trespass issues would be solved by the exchange, rather that potential trespass issues would be minimized.

**Hawk Greenway**

**D-37**

**#193**

*Section B, Access and transportation. The Analysis Area for this document is limited to the BLM lands, the trade parcels, and the transportation systems which provide access to them. This scope of analysis is too limited, and ignores more than a mile of adjacent USFS lands at Mount Sopris. This is the portal to the heart of the recreational draw of the adjacent Maroon Belles-Snowmass Wilderness area, and to ignore this fact in this EA points to its inadequacy. The fact that there is legal hiking, skiing, and horse access to the parcel A from an adjacent National Forest and nearby Wilderness area where such modes of transportation are championed and celebrated is of great importance. This is legal access and important to the recreational diversity and economy of the local area. There are, in fact, USFS recognized trails in the vicinity of the Parcel A. The trails are historic in nature, built over many years by public use, by grazing and outfitting permittees. They are recognized by the USFS, even if they are only recognized enough to be listed as “unmaintained” in the recent travel management plan. The entire White River National Forest is open to foot traffic and used by hunters, fishermen, hikers, climbers, and skiers. Mount Sopris itself has many thousands of ascents a year by the public. Again, this is legal access. Parcel A is adjacent to, and as easily accessible to those who want to enjoy it as any of the rest of the Forest is, LEGALLY.’*

Response:

Trail connections and access to and from adjacent National Forest System lands in the White River National Forest (WRNF) are discussed throughout the access and transportation and recreation analyses in Chapter 3 Sections B and C. The Scope of Analysis and Analysis Area for these analyses has been corrected in the updated EA to reflect this.

As noted in Chapter 3 Section B – Access and Transportation, the only legal public access to Parcel A is from the WRNF on the southern border of the parcel where the topography is steep. The property boundary shared by Parcel A and the WRNF is approximately one-half mile. There are no designated Forest Service or BLM roads or trails in the immediate vicinity. Although some user created trails have been cleared and marked leading into Parcel A from the south in the WRNF, these trails are not part of the WRNF long-term trail system and are not included in the WRNF Travel Management Plan. The BLM has no existing or proposed travel system roads or trails on Parcel A or within the vicinity.

**Hawk Greenway**

**D-37**

**#194**

*The claim that the BLM has no existing or proposed trails on Parcel A (page 3-9) is simply ludicrous. It is an active grazing allotment, and immediately following the above statement the document shows that there are “approximately 18 miles of motorized routes on Parcel A, including ATV trails, two tracks, and unimproved dirt ranch roads.” The document claims that these routes are “NOT OPEN TO PUBLIC USE,” when there is nothing in the public record closing them to the public at all. They are in fact, open to the (non-motorized) public, simply difficult to access due to the proponent’s closures. To claim that this exchange increases public access to already publicly accessible lands (the Crown and Red hill), and thus increases public recreational opportunity, while ignoring that the proposal actually eliminates public access to 18 miles of roads and trails they already own is nothing short of spectacular spin.*

Response:

The routes on Parcel A mentioned by the commenter are open for motorized use by the BLM and the grazing permittee for administrative, management and grazing purposes only. (Note: motorized access to these routes requires crossing private lands owned by the Proponent, and using roads that are part of a private ranching system.) These routes are not part of the BLM’s travel management system; however, if Parcel A is accessed by foot (the only legal public access to Parcel A is a circuitous, non-motorized route from the WRNF on the more remote southern border of the parcel, where the topography is steep and involves off trail travel and the use of game trails and unsanctioned, user-created trails that are not part of the WRNF or CRVFO travel system) these routes may be used by the public for non-motorized and non-mechanized use. The EA has been updated to clarify the status of these routes. Although some user-created trails have been cleared and marked leading into Parcel A from the south in the WRNF, these trails are not part of the WRNF or CRVFO long term trail system and are not included in the WRNF or CRVFO Travel Management Plan. The BLM has no official (i.e., part of the travel management system) existing or proposed roads or trails on Parcel A or within the vicinity.

**Hawk Greenway** **D-37** **#195**

*Parcel B has a public road, Thomas Creek Ditch Road, leading directly to it. It is closed to motorized and mechanized use (as is the adjacent Wilderness Area), which does nothing to limit its attractiveness for hiking or horseback riding recreational pursuits. Another lost public recreational opportunity and more spin.*

Response:

As noted in Chapter 3 Section B – Access and Transportation, Thomas Creek Ditch Road (FSR 311W.1A) crosses National Forest System land and terminates at the southern border of Parcel B. However, Thomas Creek Ditch Road is managed by the WRNF under a Special Use Permit and is closed to public motorized and mechanized use. It is important to note the road does not enter or cross Parcel B; it terminates at the southern border of the parcel. Furthermore, the parcel is extremely long and narrow (approximately 200 feet wide from north to south) where Thomas Creek Ditch Road meets the parcel (refer to Figure 3), which would provide minimal, if any, recreational opportunity for hiking or horseback riding. This is particularly true because public use of this parcel, and the road, is very low.

**Martha Cochran** **D-60** **#196**

*Page 3.8 states there is no legal motorized access and no Forest Service or BLM roads or trails in the vicinity of Federal Parcel A. It should also be noted that access by foot to the south boundary bisects a creek which provides Carbondale’s drinking water, passes through critical wildlife habitat, and has been excluded from the Forest Service trails system.*

Response:

Comment noted.

**29.0 GRAZING**

**Dorothea Farris** **D-6** **#197**

*Under land trust policies, the Aspen Valley Land Trust must engage in annual monitoring of the conservation easements it holds. Annual monitoring will include inspecting lands grazed by livestock under the conservation easement grazing plan that must be developed by Two Shoes and AVL T by an expert acceptable to AVL T and Colorado Parks and Wildlife. If anything, this monitoring is likely to*

*provide a more frequent indication of range conditions, and implementation of any necessary corrective actions, than BLM normally does. AVL T has extensive experience in range management and co-holds many conservation easements with Pitkin County that have similar range provisions to what the Parcel A easement will require. It is also significant to note that in 2011 Two Shoes offered BLM (EA page 3-91) voluntary reductions in livestock AUMS and grazing days on Federal Parcel A to improve riparian habitat there. This augurs well for future for future grazing management efforts by Two Shoes and AVL T on the parcel, as Two Shoes has shown itself to be interested in healthy land stewardship.*

Response:

Comment noted.

**James A. Wingers**

**D-10**

**#198**

*Mr Wexners' cattle and sheep will tear up the terrain beyond an acceptable level.*

Response:

As noted in Appendix A, grazing or keeping of domestic sheep on Parcels A and B is specifically prohibited without Colorado Parks and Wildlife (CPW) consent. In addition, the conservation easements for Parcels A and B require the development of a grazing management plan prepared by a competent professional acceptable to the Trust. Such plan may be periodically amended upon approval by the Trust in consultation with CPW. It is expected this grazing management plan, along with annual monitoring by the AVL T, would prevent cattle grazing from impacting the habitat beyond an acceptable level.

Also, the conservation easements require the Proponents to manage big game, habitat and vegetation on the Parcels according to a management plan prepared by a qualified expert satisfactory to the Trust and CPW, which shall be designed to protect critical bighorn sheep and other wildlife habitat on the Parcels.

**Anne Rickenbaugh**

**D-22**

**#199**

*The BLM would cancel in whole the grazing lease and preferences provided under the Thomas and Potato Bill Allotments and part of the Horse Mountain Allotments..." EA at 3-53. "Parcel 1 would no longer serve as the base property for the Sutey Allotment" rd. at 3-54.*

*This action is a substantial change. It is detrimental to the continued local cultural traditions of well managed public land grazing and thus contradicts the BLM's own "desired social outcome" in the 2007 BLM Community Assessment Report. The livestock grazing as currently managed is strictly limited, and the habitat assessments on the federal parcels reflect the overall health of the resource. The cancellation of all the federal grazing allotments, the loss of the private base property (and presumably the grazing on the Sutey Allotment, although the planning for that has not been completed) would indeed be a substantial impact on the land management and the grazing rights. Changing the land ownership eliminates the role the oversight role BLM has in limiting negative developments on the parcels in question.*

Response:

As noted in Chapter 3 Section F – Livestock Grazing Management, under the terms of the conservation easements, range on Federal Parcels A and B would be managed in accordance with a grazing management plan prepared by a competent professional acceptable to the AVL T (who would hold the conservation easements). Such plan may be periodically amended upon approval by the AVL T in consultation with CPW. This grazing management plan is expected to adequately protect range and natural resources on the parcels.

Turnbull Land and Livestock, LLLP, who holds the grazing lease and preferences on the Thomas and Potato Bill Allotments also currently holds a grazing lease on the Proponent's private lands of Two Shoes Ranch, which surrounds Parcel A. Under the Proposed Action, the BLM grazing leases on Parcel A would be cancelled and Parcel A would be incorporated into the Two Shoes Ranch. It is expected that grazing would continue on these lands through another private grazing lease.

Parcel 1 would no longer serve as a base property for the Sutey Allotment (the grazing permit for which is held by the Proponent); however, it is possible another parcel could serve as the base parcel for the allotment.

As noted in Chapter 3 Section F – Livestock Grazing Management, the Proposed Action would not substantially impact range management or existing grazing rights on Federal or Non-Federal Parcels considered in the exchange.

**Anne Rickenbaugh**

**D-22**

**#200**

*The Proposed action is expected to resolve the incidental grazing currently occurring on Parcel B because the parcel would be incorporated into the adjacent Two shoes ranchland, where such grazing would be allowed.*

*EA at 3-53. However, it would be simpler to add parcel B to the Thomas allotment and allow grazing under existing federal permit, than to transfer the parcel to private ownership.*

Response:

As noted in Chapter 3 Section F – Livestock Grazing Management, Parcels B and B-1 are not part of any existing grazing permits due to their relatively small size. The Purpose and Need for the Proposed Action is not directly related to resolving the incidental grazing currently occurring on Parcel B. Rather, it is related to consolidation of land ownership boundaries (private and BLM) in the Red Hill, Crown and Horse Mountain areas and the improvement of management of, and public access to, public lands under the jurisdiction of the BLM while minimizing public trespass on adjacent private lands. Resolving this incidental grazing reflects improved management that could be achieved through selection of the Proposed Action.

**Clark Anderson**

**D-45**

**#201**

**Sonoran Institute**

*I understand there are concerns that the easement will not adequately manage grazing. My experience with AVLT, which has a long history of holding conservation easements on ranches, makes me believe this will not be an issue. Their requirements for annual monitoring are solid their executive director works at the state level helping to establish best practices – and will likely provide as much oversight of grazing as BLM does or more. With increasingly limited resources, it is unrealistic to expect BLM to monitor grazing allotments on an annual basis, particularly on more remote lands like Federal parcel A, and likely will never be able to afford to do so. So, we believe that the AVLT conservation easement requirements for Parcel A, which are similar to many conservation easements currently held by AVLT and Pitkin County on nearby lands, will achieve the desired conservation outcomes. It is also encouraging to read that Two Shoes voluntarily agreed to grazing reductions on Parcel A last year to help restore areas where grazing was impacting certain riparian areas. It is obvious they will work with AVLT to be good stewards of the land.*

Response:

Comment noted.

**Martha Cochran**

**D-60**

**#202**

**Aspen Valley Land Trust**

*Pages 2.4, 3.54 and perhaps elsewhere, the EA notes that the conservation easement on Federal Parcel A requires a grazing management plan prepared by a professional approved by AVLT. The easement also requires the approval of Colorado Parks and Wildlife.*

Response:

Comment noted. The EA has been updated to reflect this information.

**Martha Cochran**

**D-60**

**#203**

**Aspen Valley Land Trust**

*Grazing activities have resulted in the degradation of certain areas of Thomas Creek and other specific areas of the Federal Parcels. As noted above, the conservation easements require a grazing management plan which will address those issues and by federal law, AVLT is required to monitor the conditions on the property at least annually. This is a more frequent and comprehensive review than BLM is currently able to provide. It also deserves additional mention that the landowners' voluntary reductions in the number of animals and length of grazing on the federal parcels, and the commitment to build four stock ponds should significantly reduce the impacts on Thomas Creek and other areas currently in poor condition.*

Response:

Comment noted.

## **30.0 APPRAISALS**

**A Carbondale Citizen**

**D-20**

**#204**

*The value of the Two Shoes Ranch would increase considerably, much more than the figure based on the current appraised value of the BLM land. When the holdings are consolidated, the value of every Two Shoes acre will increase.*

Response:

As noted in Chapter 1 Section C – BLM Land Exchange Policies, the Department of Interior's Office of Valuation Services (OVS) is responsible for all of BLM's real estate valuation functions including management, oversight, and valuation policy. The OVS, established by Secretarial Order No. 3300 on May 21, 2010 supports the overall mission of the Department of the Interior (DOI), as the independent body to evaluate whether land acquisitions and conveyances are at market values, as required by law. The OVS utilizes the Uniform Appraisal Standards for Federal Land Acquisitions. These Standards have been prepared for use by appraisers to promote uniformity in the appraisal of real property among the various agencies acquiring property on behalf of the United States. The valuation process is a separate administrative process that is conducted concurrently with the NEPA process. Therefore the specific considerations of the appraisals are beyond the scope of this analysis.

The appraisals conducted for this land exchange only consider the values of the Federal and Non-Federal Parcels. Private lands that are not proposed to be conveyed in the exchange (i.e., the existing Two Shoes Ranch) will not be appraised; therefore the potential value of these lands is unknown. The value of these private lands may increase, decrease, or remain the same following the exchange, but this is beyond the scope of this EA and the appraisal analysis.

**Anne Rickenbaugh****D-22****#205**

*Despite repeated requests, the BLM has not provided data concerning the appraisals of the lands involved in the proposed exchange. Thus the public cannot determine whether the values are equal or can be made equal, as required by regulation.*

Response:

As directed by the BLM Land Exchange Handbook (H-2200-1) Chapter 7 Section K – Appraisal Availability to the Public, the BLM has determined it is not appropriate to release the appraisals to the public prior to the Notice of Decision. As stated in the handbook, “approved ASD appraisals and review reports are official records used by the BLM in setting the price and reaching agreement on realty transactions. They are internal documents and are not subject to public release until the BLM has taken an action utilizing the information in the report. The appraisal report and appraisal review must be made available when the Notice of Decision is issued pursuant to 43 CFR 2201.7-1 (a).” Following this direction, the BLM will release the appraisals when the Bureau has taken an action utilizing the information in the report—at the time of the Decision Record.

**Anne Rickenbaugh****D-22****#206**

*Since the Proponents proposed this land exchange in 2009, there have been multiple and repeated requests from Pitkin County, CVEPA and concerned citizens that the agency release the appraisals and allow opportunity for public scrutiny before any exchange is completed. Indeed, over 30 scoping comments on the proposed EA identified proper and transparent valuation as an important issue, and the agency has received FOIA requests for this information from individuals wanting to comment on the Environmental Assessment. The requests that the Agency share the results of the appraisal process, prior to the completion of the exchange so that they may be evaluated for the public interest, have been repeatedly ignored, thereby undermining the public’s confidence that the Proposed Action is an equal value transaction, and engendering concern that the exchange is not in the public interest.*

Response:

As directed by the BLM Land Exchange Handbook (H-2200-1) Chapter 7 Section K – Appraisal Availability to the Public, the BLM has determined it is not appropriate to release the appraisals to the public prior to the Notice of Decision. As stated in the handbook, “approved ASD appraisals and review reports are official records used by the BLM in setting the price and reaching agreement on realty transactions. They are internal documents and are not subject to public release until the BLM has taken an action utilizing the information in the report. The appraisal report and appraisal review must be made available when the Notice of Decision is issued pursuant to 43 CFR 2201.7-1 (a).” Following this direction, the BLM will release the appraisals when the bureau has taken an action utilizing the information in the report—at the time of the Decision Record.

The BLM has responded to all Freedom of Information Act (FOIA) requests it has received to date. FOIA requests are processed by the FOIA coordinator. The FOIA coordinator ensures that requests are processed fairly by treating similarly situated requests in a like manner. FOIA provides the public with the right to request access to any agency record. This does not mean, however, that an agency will disclose every record requested. There are statutory exemptions that authorize the withholding of information of an appropriately sensitive nature. When the BLM withholds information, it specifies which exemption of the FOIA permits the withholding.

When determining whether an exchange is in the public interest, BLM gives 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 (refer to 43 CFR 2200.0-6[b]).

Section 206(b) of the Federal Land Policy and Management Act (FLPMA) does require the Federal and Non-Federal Parcels that are exchanged to be equal in value as determined by appraisals; however this is a separate requirement that is not part of the public interest determination requirement, which is found in Section 206(a) of FLPMA.

**Anne Rickenbaugh**

**D-22**

**#207**

*There is concern based on past agency practices that the BLM has undervalued the Federal parcels in Proposed Action.*

Response:

As noted in Chapter 1 Section C – BLM Land Exchange Policies, the Department of Interior’s Office of Valuation Services (OVS) is responsible for all of BLM’s real estate valuation functions including management, oversight, and valuation policy. The OVS, established by Secretarial Order No. 3300 on May 21, 2010 supports the overall mission of the Department of the Interior (DOI), as the independent body to evaluate whether land acquisitions and conveyances are at market values, as required by law. The BLM no longer has any authority to perform internal appraisals or valuations.

**Anne Rickenbaugh**

**D-22**

**#208**

*Pitkin County’s scoping comments on the EA included a 2003 article from the Appraisal Journal detailing the factors and process by which the contributing appraiser/writer arrived at a then unconventional “highest and best use” called Ranch Preservation Community (RPC). An RPC 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. Typical attributes of an RPC include: privacy, exclusivity, natural beauty, recreational opportunities such as hunting, fishing, skiing and hiking, archaeological resources, biodiversity, adjacent to large blocks of public lands, and urban service proximity.*

*The author described comparing sales of local ranches and 100 acre homesites “within the same area and found a large per acre price discrepancy. The properties sold as working ranches sold for around \$400/acre vs. around \$2000/acre for the low density subdivisions, “after adjusting for time and other substantive differences, including costs associated with subdivision, marketing, etc. Upon further analysis of the land “sold with the intent of subdivision” he found 3 important relationships:*

- 1.) Developments with fewer lots have higher selling prices;*
  - 2.) When comparing the number of deed acres per homestead, the higher-priced developments have two times as many deeded acres;*
  - 3.) The average homestead size was three times greater at the more expensive developments.*
- At the time of his analysis, Mr. Mundy was trying to decide which “highest and best use to apply,” ranching, or second homes and ranchettes. But his discoveries in his analysis caused him to develop this third alternative of RPC.*

*It takes little effort to see the similarity between Mundy’s RPC and the proponent’s properties. The existing Two Shoes Ranch parcels each possess all of the typical attributes of the RPC, including sufficient acreage to be each its own RPC; the same is true of Federal Parcel A. Even though there is single ownership of the properties, the potential to become an RPC is real. Moreover, the Two Shoes Ranch comes with 19 development rights vested for 20 years, excluding the 10 rights which the Agreement with Pitkin County would extinguish. By comparison, the development threat on the Sutey Ranch is currently only speculation based on current zoning scenarios, as the Parcel has undergone no land use or site planning.*

Response:

As noted in Chapter 1 Section C – BLM Land Exchange Policies, the Department of Interior’s Office of Valuation Services (OVS) is responsible for all of BLM’s real estate valuation functions including management, oversight, and valuation policy. The OVS, established by Secretarial Order No. 3300 on May 21, 2010 supports the overall mission of the Department of the Interior (DOI), as the independent body to evaluate whether land acquisitions and conveyances are at market values, as required by law. The OVS utilizes the Uniform Appraisal Standards for Federal Land Acquisitions. These Standards have been prepared for use by appraisers to promote uniformity in the appraisal of real property among the various agencies acquiring property on behalf of the United States. The Uniform Appraisal Standards for Federal Land Acquisitions allows for consideration of ideas such as a “ranch preservation community” and assemblage value, but does not require a specific approach. The highest and best use is ultimately determined by the appraiser and reviewed by the OVS. The valuation process is a separate administrative process that is conducted concurrently with the NEPA process. Therefore the specific considerations of the appraisals are beyond the scope of this analysis.

**Anne Rickenbaugh****D-22****#209**

*Moreover, the Proposed Action would consolidate these three already substantial acreages into one property. The idea of “assemblage value” is that the whole is worth more than the sum of the parts. Mundy’s analysis supports this idea in that, if one were to apply the relationships he discovered between price and lot size, the consolidation of these three parcels (the two “shoes” with Parcel A) offers a staggering potential for financial gain. Because of the rigorous land use code in Pitkin County, these development rights are extremely valuable by themselves; however, application of Mundy’s study indicates that the increased acreage resulting from the Proposed Action would make them considerably more valuable.*

Response:

The appraisals conducted for this land exchange only consider the values of the Federal and Non-Federal Parcels. Private lands that are not proposed to be conveyed in the exchange (i.e., the existing Two Shoes Ranch) will not be appraised; therefore the potential value of these lands is unknown. The value of these private lands may increase, decrease, or remain the same following the exchange, but this is beyond the scope of this EA and the appraisal analysis.

It is also important to note that the conservation easements would preclude any development on the Federal Parcels.

**Anne Rickenbaugh****D-22****#210**

*The debate over the value of Parcel A includes much speculation over how much the lack of vehicular access should affect that value. The analysis above suggests that Parcel A should not be considered in the context of its present use as a land-locked grazing parcel. A reasonable way to discount for the 350 foot isolation from the county road is to estimate its “with-access” value by estimating the cost to condemn access across neighboring land with access to Prince Creek Road, and deduct that cost from its “with-access” value; note that the 350 foot stretch is an historic stock drive that is still used to move cattle to the trucks. It is a reasonable assumption that the cost of condemning 350 linear feet would be a minimal expenditure given the potential return on investment of consolidating Parcel A with the Two Shoes Ranch.*

Response:

The Uniform Appraisal Standards for Federal Land Acquisitions does not allow for the use of hypothetical conditions, such as a hypothetical condemnation action, to be considered when determining market value of a parcel. Although the Federal Land Policy and Management Act provides the authority to BLM to condemn interests in land, it is BLM policy to rely on negotiations with willing sellers as the primary acquisition method. In general, BLM management will only support acquisition by condemnation, if available, as a last resort in the acquisition of needed private lands.

As noted in Chapter 2, Alternatives and Concepts Considered but Eliminated from Detailed Analysis, acquisition of an easement to provide public access through use of eminent domain is beyond the scope of analysis, as the BLM does not have the authority to invoke eminent domain at the level of decision on this project.

**Anne Rickenbaugh**

**D-22**

**#211**

*Federal Parcel A should be considered in the context of its potential, not its current use as grazing. Indeed, this supposition is supported by a U.S. Court of Appeals for the 9th Circuit 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.*

Response:

The valuation process is a separate administrative process that is conducted concurrently with the NEPA process. Therefore the specific considerations of the appraisals are beyond the scope of this analysis. However, as part of an appraisal, what is legally, financially, and physically feasible on a property is analyzed to determine the property's highest and best use, and hence its market value.

**Anne Rickenbaugh**

**D-22**

**#212**

*The Feasibility Report states that the value of the non-federal parcels is expected to exceed the value of the federal parcels, necessitating a cash equalization. Id. at 6. Proponents have stated that they will waive the cash equalization. Ibid. Cash equalization is limited 15,000 or 3% of value of federal parcels, whichever is less, and cannot be used if the difference in value is greater than \$15,000. 43 CFR 2201.6(c). However, the value of exchange is expected to exceed \$500,000. 5 Feasibility Report, ibid. Three percent of \$500,000 is \$15,000; thus under the regulation cited above, the proposed exchange cannot legally occur. Mysteriously, none of this is discussed, or even mentioned, in the EA.*

Response:

As noted in Chapter 1 Section C – BLM Land Exchange Policies, the Federal Land Policy and Management Act (FLPMA) requires the value of exchanged federal and non-federal lands be equal; however, adjustments for any difference in value by cash equalization payments may be made up to 25 percent of the value of the federal lands to be disposed.

As directed by the BLM Land Exchange Handbook (H-2200-1), the administrative process for equalizing values in land exchanges could also involve adding or deleting lands from the exchange proposal or allowing the non-federal party to donate portions of the non-federal lands to account for the difference owed by the United States. Neither the BLM nor the Proponents wish to delete non-federal lands from the exchange proposal and the Proponents have stated that they would donate any excess land value to the United States. The final EA has been updated to reflect this possibility.

**Anne Rickenbaugh****D-22****#213**

*The applicable regulation also states that that:*

*A cash equalization payment may be waived only after the authorized officer determines in writing how the waiver will expedite the exchange and why the public interest will be better served by the waiver. 43 CFR 2201.6(d).*

*The BLM needs to explain how the proposed land exchange is legal in light of the above. If it is legal, and cash equalization will be waived, the agency must show in writing how the waiver is in the public interest.*

Response:

As noted in Chapter 1 Section C – BLM Land Exchange Policies, the Federal Land Policy and Management Act (FLPMA) requires the value of exchanged federal and non-federal lands be equal; however, adjustments for any difference in value by cash equalization payments may be made up to 25 percent of the value of the federal lands to be disposed.

As directed by the BLM Land Exchange Handbook (H-2200-1), the administrative process for equalizing values in land exchanges could also involve adding or deleting lands from the exchange proposal or allowing the non-federal party to donate portions of the non-federal lands to account for the difference owed by the United States. Neither the BLM nor the Proponents wish to delete non-federal lands from the exchange proposal and the Proponents have stated that they would donate any excess land value to the United States. The final EA has been updated to reflect this possibility.

**Anne Rickenbaugh****D-22****#214**

*The appraisal issue is of vital importance in determining whether the proposed exchange is in the public interest. Therefore, we ask the agency allow additional public comment on the appraisal issue prior to making a decision on the land exchange. The needed additional information on the appraisal could be provided in a supplement to the EA, with a minimum 30-day comment period after publication.*

Response:

Section 206(b) of the Federal Land Policy and Management Act (FLPMA) does require the Federal and Non-Federal Parcels that are exchanged to be equal in value as determined by appraisals; however this is a separate requirement that is not part of the public interest determination requirement, which is found in Section 206(a) of FLPMA.

As directed by the BLM Land Exchange Handbook (H-2200-1) Chapter 7 Section K – Appraisal Availability to the Public, the BLM has determined it is not appropriate to release the appraisals to the public prior to the Notice of Decision. As stated in the Handbook, “approved ASD appraisals and review reports are official records used by the BLM in setting the price and reaching agreement on realty transactions. They are internal documents and are not subject to public release until the BLM has taken an action utilizing the information in the report. The appraisal report and appraisal review must be made available when the Notice of Decision is issued pursuant to 43 CFR 2201.7-1 (a).” Following this direction, the BLM will release the appraisals when the Bureau has taken an action utilizing the information in the report—at the time of the Decision Record.

**Anne Rickenbaugh****D-22****#215**

*Over 30 comments were submitted on the valuation/appraisal issue, yet the BLM has not provided data for the public to use in determining if the proposed exchange is in the public interest. See discussion of appraisals in section I above.*

Response:

FLMPA requires that the value of exchanged federal and non-federal lands be equal, in terms of appraised values. The valuation process is a separate administrative process that does not consider resource management. Therefore, while the appraisal must show equal values, they are not part of the public interest determination.

As directed by the BLM Land Exchange Handbook (H-2200-1) Chapter 7 Section K – Appraisal Availability to the Public, the BLM has determined it is not appropriate to release the appraisals to the public prior to the Notice of Decision. As stated in the handbook, “approved ASD appraisals and review reports are official records used by the BLM in setting the price and reaching agreement on realty transactions. They are internal documents and are not subject to public release until the BLM has taken an action utilizing the information in the report. The appraisal report and appraisal review must be made available when the Notice of Decision is issued pursuant to 43 CFR 2201.7-1 (a).” Following this direction, the BLM will release the appraisals when the bureau has taken an action utilizing the information in the report—at the time of the Decision Record.

## 32.0 PROPOSED ACTION

**Hawk Greenway**

**D-37**

**#216**

*Throughout this document the 1.1 million management mitigation fund is noted as a Donation, allowing a deduction to be claimed for the “gift” to the feds. However, it is not a donation since it is a required part of this exchange (a “commitment”) and should be explicitly referred to as such a payment.*

Response:

The Proponents voluntarily offered to provide the referenced funds in their initial proposal to the BLM. It was not a requirement or mitigation measure imposed by the BLM. The donation is a component of the Proposed Action; therefore, if the Proposed Action is approved it becomes a requirement.

## 33.0 CONSERVATION EASEMENTS

**Mary Lou Zordel**

**D-11**

**#217**

*The problem lies in what happens many years from now. Once the land is gone it's gone. Conservation easements may be well intentioned but what happens when another unfathomably wealthy man comes along and persuades the party in power at the time to just change the law????*

Response:

The BLM has determined that the conservation easements would adequately protect the resource values of the Federal Parcels. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action. Amending the conservation easements is not reasonably foreseeable and beyond the scope of this analysis.

However, according to the AVLT Amendment Policy and Procedure, Amendments to conservation easements are rare and are granted only after the AVLT staff and Board of Directors determine the proposed changes meet the criteria established in the organization’s Amendment Policy. The Amendment Policy directs:

“Any amendment must honor the conservation values of the property burdened by the original easement and comply with the intended purpose of the original easement. Accordingly, any amendment must either enhance or have neutral impact on the conservation values of the property, or, if appropriate, add a new conservation purpose to the easement if consistent with grantor’s, but shall not permit any negative

impacts to the conservation values. Any amendment proposed for consideration must meet one or more of the following criteria:

- To clarify an error or ambiguity or unforeseen circumstance;
- To strengthen the purposes or long-term viability of the easement;
- When the circumstances of the property have changed through force of nature so greatly as to render the purposes of the easement non-existent.”

According to the EVLT, “an amendment must have either a beneficial or neutral effect on conservation values protected by the conservation easement. Furthermore, the requested modification must be consistent with the goals of the Trust and must not undermine the Trust’s obligation to monitor and enforce the easements.

“No amendment will provide private inurement for members of the Board or staff of EVLT, or private benefit to other parties as prohibited by IRS Regulations.

“Conservation easements may be amended under the following circumstances:

8. To allow implementation of agreements specified in the conservation easement,
9. To correct an error in original drafting; for example:
  - a) To correct a legal description (survey description),
  - b) To correct errors in conservation easement exhibits,
  - c) To include exhibits inadvertently omitted,
  - d) To correct basic typographical or clerical errors and/or omissions.
10. To clarify an ambiguity in the conservation easement and/or to cause the agreement to conform to the intent of the parties,
11. To adjust a conservation easement to acknowledge a condemnation by a public agency,

To add new provisions that strengthen the preservation and protection of conservation values.”

**Anne Rickenbaugh**

**D-22**

**#218**

*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.*

Response:

The BLM has determined that the conservation easements are of sufficient specificity to adequately protect the resource values of the Federal Parcels. While changing ownership of the Federal Parcels is possible in the future, the conservation easements would remain in effect regardless of who owns the property. If the parcels were to change ownership, the AVLT or EVLT would contact the new landowner and provide them with a copy of the conservation easement, baseline documentation, other relevant documents and an explanation of the monitoring requirements and process. The Trusts would also request

a personal meeting with new landowners. This would ensure that interpretation of the terms of the conservation easements are well understood by all parties. In reality, many potential buyers of conserved properties contact the Trusts well ahead of a purchase to clarify how the CE would impact the property. Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. To provide funds for easement monitoring, both AVLT and EVLT maintain a restricted Monitoring and Legal Defense Fund. AVLT's fund is currently approximately \$1.2 million. In addition, both the AVLT and the EVLT are members of TerraFirma LLC, a national industry-funded insurance program which insures against legal costs incurred in the enforcement and defense of conservation easements held by participating land trusts. This insurance program was developed by the industry in response to the types of concerns noted in this comment. The Legal Defense Funds and TerraFirma insurance assure that there is adequate enforcement funding regardless of the financial security of the rest of the organization.

With respect to the willingness to enforce the terms of the conservation easements, the BLM has determined that the Trusts are very likely to be willing to enforce the terms of conservation easements. A land trust that does not enforce an easement would lose not only accreditation and certification but also its 501 (c)(3) tax exempt status. In the last three years, AVLT has issued three "Cease and Desist Agreements" for activities that were occurring on conserved properties in violation of the easement, and has followed up on each one in accordance with the organization's enforcement procedures, requiring development, approval and implementation of extensive restoration activities of damage where applicable.

**Anne Rickenbaugh**

**D-22**

**#219**

*Moreover, despite a common presumption, the Grantee is not required to enforce the terms of the easement; in the AVLT easements, Chapter 1 Section 2 – Trust's Remedies: Enforcement states "Enforcement of the terms of this Easement shall be at the sole discretion of the Trust."*

Response:

The commenter is incorrect in that the Trusts would not be required to enforce the terms of the conservation easements. A land trust that does not enforce an easement would lose not only accreditation and certification but also its 501 (c)(3) tax exempt status. If land trust staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary.

The use of the term "sole discretion" is a legal provision giving the AVLT the broadest possible authority to enforce the conservation easements. It is used in all conservation easements held by Pitkin County as well as nearly all land trusts. The enforcement process depends on the type of violation. In the last three years, AVLT has issued three "Cease and Desist Agreements" for activities that were occurring on conserved properties in violation of the easement, and has followed up on each one in accordance with these enforcement procedures, requiring development, approval and implementation of extensive restoration activities of damage where applicable.

**Anne Rickenbaugh**

**D-22**

**#220**

*Another 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, most 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.*

Response:

The BLM has determined that the conservation easements would adequately protect the resource values of the Federal Parcels. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action. Amending the conservation easements is not reasonably foreseeable and beyond the scope of this analysis.

However, both the AVLТ and the EVLT maintain an Amendment Policy. According to the AVLТ policy, amendments to conservation easements are rare and are granted only after the AVLТ staff and Board of Directors determine the proposed changes meet the criteria established in the organization's Amendment Policy. The Amendment Policy directs:

“Any amendment must honor the conservation values of the property burdened by the original easement and comply with the intended purpose of the original easement. Accordingly, any amendment must either enhance or have neutral impact on the conservation values of the property, or, if appropriate, add a new conservation purpose to the easement if consistent with grantor's, but shall not permit any negative impacts to the conservation values. Any amendment proposed for consideration must meet one or more of the following criteria:

- To clarify an error or ambiguity or unforeseen circumstance;
- To strengthen the purposes or long-term viability of the easement;
- When the circumstances of the property have changed through force of nature so greatly as to render the purposes of the easement non-existent.”

According to the EVLT, “an amendment must have either a beneficial or neutral effect on conservation values protected by the conservation easement. Furthermore, the requested modification must be consistent with the goals of the Trust and must not undermine the Trust's obligation to monitor and enforce the easements.

“No amendment will provide private inurement for members of the Board or staff of EVLT, or private benefit to other parties as prohibited by IRS Regulations.

“Conservation easements may be amended under the following circumstances:

1. To allow implementation of agreements specified in the conservation easement,
2. To correct an error in original drafting; for example:
  - a) To correct a legal description (survey description),
  - b) To correct errors in conservation easement exhibits,
  - c) To include exhibits inadvertently omitted,
  - d) To correct basic typographical or clerical errors and/or omissions.
3. To clarify an ambiguity in the conservation easement and/or to cause the agreement to conform to the intent of the parties,
4. To adjust a conservation easement to acknowledge a condemnation by a public agency,
5. To add new provisions that strengthen the preservation and protection of conservation values.”

To provide funds for easement monitoring and enforcement, both AVLТ and EVLT maintain restricted monitoring/stewardship and legal defense funds. AVLТ's fund is currently approximately \$1.2 million. In addition, both AVLТ and EVLT are members of TerraFirma LLC, a national industry-funded insurance

program which insures against legal costs incurred in the enforcement and defense of conservation easements held by participating land trusts. This insurance program was developed by the industry in response to the types of concerns noted in this comment. The legal defense funds and TerraFirma insurance assure that there is adequate enforcement funding regardless of the financial security of the rest of the organization. In addition, each land trust maintains a conflict of interest policy that would prevent them from being beholden to grantors as a result of any donation.

**Ron Velarde**

**D-31**

**#221**

**Colorado Parks and Wildlife**

*CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife. Specifically, CPW would encourage strict adherence to the requirement for a noxious weed management program, grazing management plan, and big game management plan. Local CPW staff is available to assist in the development and implementation of these programs.*

Response:

Comment noted.

**Chuck Downey**

**D-32**

**#222**

**Crystal Valley Environmental Protection Association**

*CVEPA believes that the draft EA does not adequately consider the potential negative impact on natural resources due to the end of federal land management oversight of Parcel A, and the reliance instead on the conservation easements as proposed. The draft EA notes that under the “no action” alternative, BLM Land Health Standards would continue to apply to the current federal lands, and that grazing reductions would be available to the BLM to address the current habitat concerns, as also documented in photos showing riparian degradation from livestock in the Biological Resources Summary Report.*

*In contrast, the conservation easements as proposed do not include comparable provisions that would continue to empower any party with the authority to require adjustment of agricultural or other human activities to protect or enhance the current habitat.*

Response:

The BLM has determined that the conservation easements would adequately protect the resource values of the Federal Parcels. As discussed in Chapter 2 Section B – Proposed Action and Appendix A, the conservation easements would allow the Trusts to preserve and protect the “Conservation Values” of the parcels in perpetuity. Any permitted uses must be conducted in a manner not inconsistent with the preservation and protection of the Conservation Values. These uses are allowed provided they do not impair the relatively natural habitat for native plants (including Harrington penstemon habitat), wildlife, or similar ecosystems within and upon the Parcels. As noted in Chapter 3 Section F – Livestock Grazing Management, under the terms of the conservation easements, range on Federal Parcels A and B would be managed in accordance with a grazing management plan prepared by a competent professional acceptable to the AVLT (who would hold the conservation easements) and Colorado Parks and Wildlife (CPW). Such plan may be periodically amended upon approval by the AVLT in consultation with CPW. Review and approval of this grazing management plan would provide the AVLT with the ability to adjust agricultural or other human activities to protect or enhance the relatively natural habitat of the parcels. Additionally, in the official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Chuck Downey****D-32****#223****Crystal Valley Environmental Protection Association**

*Please note that CVEPA believes that conservation easements, properly crafted, could achieve an appropriate balance between private and public management control in such sensitive habitat. For example, other federal agencies, such as the Fish and Wildlife Service, and private entities such as the Nature Conservancy, have each utilized conservation easements that empower themselves as the Grantees to require changes to land management practices as a result of habitat monitoring. We believe that similar measures should be part of the proposed conservation easements.*

Response:

Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. The Trusts would enforce the terms of its conservation easements and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts' Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary. In addition, Federal Parcels A and B would be managed in accordance with a management plan prepared by a competent professional acceptable to the AVLT and Colorado Parks and Wildlife (CPW). The adaptability of the management plan, like a BLM management plan, allows for plasticity of management to respond to and protect important conservation values now and in the future.

The BLM appreciates this suggestion for improving the conservation easements; however, the bureau has determined that the conservation easements would adequately protect the resource values of the Federal Parcels as currently written.

Additionally, in the official comments submitted on the EA, CPW has stated "CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife."

**Chuck Downey****D-32****#224****Crystal Valley Environmental Protection Association**

*We note that the proposed EA states that the effectiveness of conservation easements for protecting the impacted species was analyzed in a non-public report that is in the "project file." If such a report exists, it should have been made available during the public comment period on this EA. The failure of the BLM to allow public review of this analysis is of concern to us.*

Response:

It is a common practice for the BLM, and other federal agencies, to utilize technical reports in the preparation of NEPA documents. These documents are retained in the project file for the administrative record of the project. Retaining documentation in the project file, and including summaries thereof in the EA keeps the EA document more concise by only providing pertinent information. As noted in the BLM NEPA Handbook (H-1790-1), "the administrative record is the paper trail that documents the BLM's decision-making process and the basis for the BLM's decision... Supporting records consist of material generated or used in the preparation of environmental documents. As a guiding principle, these records must demonstrate both the process and information used to reach the final decision." The BLM has fully considered and will utilize the information contained in the technical reports in consideration of the final

decision. As noted in Chapter 3 Section L – Wildlife, the analysis presented in the EA summarizes the findings contained in the more detailed wildlife specialist report in the project file; the findings within each document are identical. The full technical reports are available from the BLM by request.

**Chuck Downey**

**D-32**

**#225**

**Crystal Valley Environmental Protection Association**

*The EA tacitly acknowledges that the conservation easements as proposed, lack effective grazing management provisions by stating that it is “likely” that such measures will eventually be included in management plans that would be developed later. (See EA at pg 3-97) Unfortunately, the EA does not provide any support for this conclusion. We ask the following questions and request that the responses be included in the final EA:*

*Why is it likely that a management plan (that does not yet exist) will cure the rather lenient structure of the proposed conservation easements?*

*As noted above, there are ample precedents for including habitat management oversight provisions in conservation easements comparable to those possessed by the BLM for oversight of grazing and other land uses based on Land Health Standards. We therefore request that such provisions be included in the conservation easements to be administered by the two land trusts involved in this exchange.*

Response:

As discussed in Chapter 2 Section B – Proposed Action, Chapter 3 Section F – Livestock Grazing Management, and Appendix A, the conservation easements for Federal Parcels A and B require the development of a grazing management plan prepared by a resource professional acceptable to the AVLT and Colorado Parks and Wildlife (CPW). This plan may be periodically amended upon approval by the AVLT in consultation with CPW. Review and approval of this grazing management plan would provide the AVLT with the ability to adjust agricultural or other human activities to protect or enhance the relatively natural habitat of the parcels. The conservation easements on the Federal Parcels also include provisions for management of big game, habitat and vegetation. The monitoring and enforcement of these provisions (terms) would also allow the Trusts to adjust agricultural or other human activities to preserve the resource values of the parcels. The BLM appreciates this suggestion for improving the conservation easements; however, the bureau has determined that the conservation easements would adequately protect the resource values of the Federal Parcels as currently written.

Additionally, in the official comments submitted on the EA, CPW has stated “CPW supports the terms of these conservation easements and feels that the permitted and prohibited uses in the agreements are fair to the landowners while still preserving the value of these lands for wildlife.”

**Hawk Greenway**

**D-37**

**#226**

*Page A2 allows no “defacto” subdivision under the CE – yet a defacto subdivision is what the Prince Creek Homeowners Association agreement creates, by limiting their legal agreed right of access to only a portion of parcel “A”.*

Response:

The outcome of the Prince Creek Home Owners Association Agreement is discussed in Chapter 3 Section C – Recreation, as appropriate. The agreement is relevant to the decision at hand in that it spells out the agreed upon rights of access for these owners to Federal Parcel A should the proposed land exchange be approved. Therefore, this continued access is discussed in the EA where appropriate. Details of this private agreement which have no bearing on the BLM decision are not discussed in the EA.

Subdivision or defacto subdivision within the conservation easement refers to the ownership of the land. Allowing adjacent landowners to use some portions of the parcel for private recreation and disallowing

use of other portions is not related to subdivision of the property. Rather it is a private land use and management decision unrelated to ownership.

**Hawk Greenway****D-37****#227**

*The net loss of wetlands documented in the EA is claimed to be offset by the creation of CE to protect the land, the language in the CE is broad enough to drive a truck through re development of ponds, ditches, irrigation structures, etc “Once approved by the AVLTL,” and siltation protection etc etc.*

Response:

As noted in Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones, the conservation easements for Federal Parcels A and B are designed to protect the Conservation Values of these parcels, including riparian/wetland habitats, streams, and ponds. The easements would prohibit development of the parcels and they include special provisions to protect water resources. Specifically, they state that the Grantor shall not divert, dam, pollute, dredge, intentionally destabilize or degrade natural banks and shorelines, or otherwise alter Potato Bill Creek, Thomas Creek, or other naturally-occurring streams, springs, lakes, ponds, designated wetlands, or other surface or subsurface water features that may occur on the parcels without approval of the AVLTL. In addition, the easements would require that a Grazing Management Plan be developed by a natural resource professional. Proper grazing management would be an important aspect of managing the riparian/wetland habitats on Parcels A and B.

The conservation easement on Parcels C, D and E has been structured to protect the Conservation Values present on the three parcels, including riparian/wetland habitats and streams. Development of the parcels would be prohibited, and only minor agricultural improvements would be permitted. In particular, the easement states that the Grantor shall not alter, impair, modify, or adversely change existing ponds, wetlands, or stream channels in a manner that is inconsistent with the preservation and protection of the Conservation Values. In addition, restrictions on timber harvest, mineral and energy development and exploration, off-road vehicle use, and surface disturbances, as well as the requirement to control noxious weeds would protect and preserve the Conservation Values of the Parcels, including riparian/wetland habitats.

Thus, the BLM has determined that the conservation easements offer adequate protection of wetlands to be transferred out of public ownership as directed by EO 11990. The conservation easements are finalized and would be embedded in any approval of the land exchange as a component of the Proposed Action.

The AVLTL approval process varies depending on the type of projects requiring trust approval, the conservation purposes and scope of work. The norm is that the landowner is required to submit specific plans, which often are required to include ecological reports of impacts, revegetation plans and design standards. Those plans, depending on the nature of the activity, are reviewed by staff and/or by consultants in the particular field. Road construction, wetlands and any stream channel work would require professional planning and review. Periodic clean-outs of livestock ponds is generally not regulated, as it is considered a part of maintaining water rights and system maintenance.

**Hawk Greenway****D-37****#228**

*No plan for a CE on parcel B1 (one acre sliver) despite an incredible slice of riparian area there. see Photo 3Q-6 Why not? Small parcels, of high value riparian habitat should be protected from development. Isn't there a CE on the adjacent private land? Or are there plans to build a pond/road on this parcel?*

Response:

As noted in Chapter 2 Section B – Alternatives Considered in Detail, the size and configuration of Parcel B-1 (a narrow strip of land totaling approximately 1 acre) does not lend to it being placed into a conservation easement. There are not currently conservation easements on the immediately adjacent

private land. However, approximately 1,067 acres on other portions of Two Shoes Ranch have conservation easements on them which are held by AVL T and Pitkin County.

There are no current plans to develop this parcel and the Proponents have stated they have no intention of developing this parcel. This parcel is intended to be incorporated into the ranch for grazing and conservation purposes. Furthermore, the wetland habitat on this parcel would be protected by Section 404 of the Clean Water Act, which would require a Chapter 4 Section 04 permitting process review by the Army Corps of Engineers for any disturbance of the wetlands on this parcel.

Finally, this parcel is not part of any approved development envelope and Pitkin County development regulations do not recognize any development right for lands leaving federal ownership. Therefore, any development would require Pitkin County approval.

**Hawk Greenway**

**D-37**

**#229**

*Page 2-16 The EA document repeatedly refers to the CE's covering the exchanged private lands. The high quality riparian habitat crossed by the small parcel B-1 is not going to be covered by the CE's contemplated, so any reference to "All the parcels" is not strictly speaking, true. This could be simply sloppy writing, or it could be because the proponents would like to do something with Parcel B-1 that would be precluded by a CE. Small parcels can be protected by CE, so unless there is a better reason than "too small," put an easement on it. Look at the included photo of the spot to see its habitat value.*

Response:

In nearly every instance conservation easements on the Federal Parcels are mentioned in the EA, the BLM has included a qualifier such as "except the 1-acre Federal Parcel B-1." For example refer to Chapter 3 Section C – Recreation, "If the proposed land exchange is approved, conservation easements would be placed on all BLM lands that become private (Appendix A), except the 1-acre Federal Parcel B-1."

There are, however, four instances where this qualifier has been added to the final EA. See Chapter 3 Section M – Plants, Chapter 3 Section P – Water Quality, Chapter 3 Section Q – Wetlands, Floodplains and Riparian Zones and Chapter 3 Section S – Soils. The absence of this qualifier in these sections was an oversight that has now been corrected in the final EA.

As noted in Chapter 2 Section B – Alternatives Considered in Detail, the size and configuration of Parcel B-1 (a narrow strip of land totaling approximately 1 acre) does not lend to it being placed into a conservation easement. There are no current plans to develop this parcel and the Proponents have stated they have no intention of developing this parcel. This parcel is intended to be incorporated into the ranch for grazing and conservation purposes. Furthermore, the wetland habitat on this parcel would be protected by Section 404 of the Clean Water Act, which would require a Chapter 4 Section 04 permitting process review by the Army Corps of Engineers for any disturbance of the wetlands on this parcel.

Finally, this parcel is not part of any approved development envelope and Pitkin County development regulations do not recognize any development right for lands leaving federal ownership.

**Delia Malone**

**D-41**

**#230**

**Crystal River Caucus**

*We have had an excellent working relationship with AVL T over the years, and believe that their stewardship of the land will afford protection that at least equals BLM management.*

Response:

Comment noted.

<b>Clark Anderson</b>	<b>D-45</b>	<b>#231</b>
<b>Sonoran Institute</b>		

*We have great respect for the work of AVLT, and are certain that they will be excellent stewards of the land. As just noted, they already have experience in administering 1000+ acres of existing conservation easements on the ranch, which directly abut Parcel A.*

Response:

Comment noted.

<b>Bill Hanks</b>	<b>D-49</b>	<b>#232</b>
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*I fully support the Colorado Parks and Wildlife recommendations and I believe that in combination with the AVLT there is a much better chance for the management of wildlife herds and grazing permits. Pitkin County OST Land Managements Plans place recreation values far ahead of wildlife and agriculture. My experience is that once OST acquires large parcels they develop them to a point that requires unenforceable closure mitigation to protect the very lands they have acquired. The U.S. Forest Service, Colorado Parks and Wildlife, and the AVLT all have admirable track records in contrast to OST.*

Response:

Comment noted.

<b>Martha Cochran</b>	<b>D-60</b>	<b>#233</b>
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**Aspen Valley Land Trust**

*As noted above, the conservation easements require a grazing management plan which will address those issues and by federal law, AVLT is required to monitor the conditions on the property at least annually. This is a more frequent and comprehensive review than BLM is currently able to provide*

Response:

Comment noted.

<b>Dawn Barton</b>	<b>D-64</b>	<b>#234</b>
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*As you know, I am a field biologist who does conservation easement monitoring for the Aspen Valley Land Trust, among other projects, on a contract basis. In that capacity, I have monitored the five conservation easements (totaling 1067 acres) which AVLT already holds on the former Crystal Island Ranch over the past ten years, which are now part of the Two Shoes Ranch. Those lands lie on both sides of Federal Parcel A, so I am very familiar with Parcel A...My last comment is that Aspen Valley Land Trust has a policy that requires that their conservation easements be monitored on an annual basis, and that remedial action will be taken if conservation values are being jeopardized. I think that requirement will provide protection for Federal Parcel A that that equals, or exceeds, the current BLM protection.*

Response:

Comment noted.

<b>Anne Rickenbaugh</b>	<b>D-65</b>	<b>#235</b>
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*“Relatively Natural Habitat” in capital letters, with reference to the following statute [§1.170A-14(d)(3)] is defined on Page 1 under Recitals where it is listed and then defined as a valid conservation purpose under the larger heading of “Conservation Values.” The first of only two references to Harrington’s Penstemon, the only currently known BLM sensitive plant species on the private federal parcels offered*

*for trade, in the CE document for Parcel A is under Recitals and then under this subcategory of Conservation Values- "Relatively Natural Habitat." The simple statement is made that, "A portion of the property is also habitat for Harrington penstemon (Penstemon harringtonii), a plant species recognized as a "sensitive" plant species by Colorado BLM." So the only protection afforded Harrington's penstemon (properly referred to as Harrington's not Harrington) in the CE is through any reference to this umbrella term, "Relatively Natural Habitat" or presumably under the broader umbrella term "Conservation Values" which is defined to include "Relatively Natural Habitat" under Recitals.*

*The only other time the use of the term "relatively natural habitat" is used in this CE is under Agreement, Section 7.2, Resource Management and Use. Here it is used only with lower case letters, whereby it could be assumed that this is not a reference to the definition of a capitalized "Relatively Natural Habitat" under Recitals, but instead could mean whatever a reviewer's idea of the words relatively natural habitat may be, which alone is a vague description that has no meaning in any scientific or biological sense.*

*Quote, "Accordingly, Grantor agrees not to alter the topography of the Property through placement or removal of soil, gravel, land fill, or other materials nor to impair the relatively natural habitat (this is the commenters italicized emphasis) for native plants (including Harrington penstemon habitat), wildlife, or similar ecosystems within and upon the Property, except: ...The meaning of "relatively natural habitat" is unclear in this directive.*

*Under Agreement, Section 7, Prohibited and Permitted Uses, Section 7.2, Resource Management and Use, the above statement related to the prohibition of any alteration of topography is the only resource protection covered here, with the majority of language in Section 7.2 describing describes the exceptions to this singular Prohibited Use agreement language and listing and mainly lists allowed uses of the property. Changing the "relatively natural habitat" here to a capitalized version would solidly refer this statement back to the well-defined category it represents under the defined Conservation Values section of the CE instead of leaving it vulnerable to a murky interpretation. Adding the following language and capitalization (in bold) such as "not to alter the topography of the Property through placement or removal of soil, gravel, land fill, or other materials nor to impair the Relatively Natural Habitat or the habitats for native plants (including Harrington's penstemon habitat and any habitat for future plant species of special concern that may arise), plant communities, wildlife, or similar ecosystems within and upon the Property, except:" would provide more specific protections.*

*The only other time the wording "natural habitat" is used is without the qualifier "relatively" and with lower case letters under Agreement, section 2. Purposes. Without the same wording "Relatively Natural Habitat" and without capital letters, "natural habitat" can be inferred to mean something entirely different than its use under Recitals. The use of the words "natural habitat" is not the same and therefore does not refer back to the umbrella term, Conservation Values on page one of the CE. The words "natural habitat" are then taken at face value to mean exactly what the reader believes "natural habitat" to mean, which is potentially such a broad definition and interpretation as to have little meaning and again certainly none in any scientific or biological context. The wording under Agreement, section 2. Purposes should be changed (changes in bold) to "the primary purposes of this Easement are; 1) to preserve and protect Relatively Natural Habitat, including bighorn sheep habitat" This will refer back to the definition of Relatively Natural Habitat under Recitals and then include protections for Harrington's penstemon within the primary purposes of the CE.*

**Response:**

The terms "Relatively Natural Habitat," "relatively natural habitat," and "natural habitat" are interpreted under the conservation easements as synonymous terms. The term "relatively natural habitat" is taken directly from the U.S. Treasury Regulations governing conservation easements, and is listed as one of four "qualified conservation purposes." The intention of the term is to preserve significant habitat and functioning ecological systems, whether or not modified by human presence. For instance, on the Federal Parcels, grazing has occurred over the past 80+ years and the habitat on much of the land is "relatively" natural. In the remote, steep areas where cattle do not roam and human activity is very rare, the habitat is

“natural.” In general both terms are used where there is native habitat, native species and little human activity. The BLM appreciates this suggestion for improving the conservation easements; however, the Bureau has determined that the conservation easements would adequately protect the resource values of the Federal Parcels as currently written.

**Anne Rickenbaugh**

**D-65**

**#236**

*While Section 5. Rights of the Trust, clearly states the Trust has “the right to preserve and protect the Conservation Values in perpetuity,” other sections of the CE have the ability to vastly diminish the initial Conservation Values with the simple approval of the Trust as stated or through a consultation with the CPW.*

*Rather than outright prohibition of many activities, uses and practices on the property, many are allowed at the discretion of the Trust and/or CPW consultation. Such allowances could lead to actions that may seriously degrade the Conservation Values as currently defined in the CE. Legally there is vast room for loopholes and extensive changes in the future interpretation of Section 7.1 Development Rights and Improvements, Section 7.2 Resource Management and Use, and Section 7.3 Other Restricted Uses and Practices with a change in the political whims of the Trust and or the CPW. A more robust CE would simply state the allowed development rights and improvements, resource management actions and uses and clearly list restricted uses and practices without so many opportunities to make changes to the landscape with simple approvals from the Trust and CPW consultations.*

*For Example: “Existing primitive roads may be maintained, but shall not be substantially improved, widened or relocated, nor additional roads constructed, without approval of the Trust.” So this is not an absolute prohibition, but could potentially change with the change in the political whims of the Trust in the distant future. Another way to interpret this is “existing primitive roads can be substantially improved, widened or relocated, or additional roads constructed with the approval of the Trust.” This is a very loose restriction.*

Response:

The BLM has determined that the conservation easements would adequately protect the resource values of the Federal Parcels as written. The AVLTT approval process varies depending on the type of projects requiring trust approval, the conservation purposes and scope of work. The norm is that the landowner is required to submit specific plans, which often are required to include ecological reports of impacts, revegetation plans and design standards. Those plans, depending on the nature of the activity, are reviewed by staff and/or by consultants in the particular field. Road construction, wetlands and any stream channel work would require professional planning and review. Periodic clean-outs of livestock ponds is generally not regulated, as it is considered a part of maintaining water rights and system maintenance. Similarly, the Proponents’ and BLM’s plans to build dispersed water sources is the type of project that would not require approval and would be encourage to reduce impacts to streams and disperse grazing impacts.

**Anne Rickenbaugh**

**D-65**

**#237**

*A monitoring program should be required in the CE to detect any changes that occur in the populations of Harrington’s penstemon and should be required in the future for any other plants that are newly placed in a special status category by any state or federal land management entities. Any downward trend in populations or numbers should trigger a reassessment of any activities or land management practices that would be occurring in the vicinity of the plants, especially livestock grazing.*

Response:

Should the Proposed Action be approved, the Trusts would be required to monitor the Federal Parcels at least annually, as required by law. The Trusts would enforce the terms of its conservation easements,

including protection of Harrington's penstemon habitat, and take necessary steps to see that violations are documented and remedied according to the terms of the conservation easement deed and the Trusts' Violation and Enforcement Procedure. If staff determines that the terms of an easement have been violated, the Trusts would be required to take action. The nature of the Trusts' action depends on many circumstances, including the extent and willfulness of the violation, whether the violation was caused by the landowner or a third party, the willingness of the landowner to resolve the matter amicably, the certainty that a violation has occurred, the quality of the evidence of violation, and the terms established by the applicable easement. Generally, the Trusts attempt to resolve any violations with the landowners directly; however they have the ability to file a legal action if necessary. In addition, Federal Parcels A and B would be managed in accordance with a management plan prepared by a competent professional acceptable to the AVL and Colorado Parks and Wildlife (CPW). The adaptability of the management plan, like a BLM management plan, allows for plasticity of management to respond to and protect important conservation values now and in the future.

**Anne Rickenbaugh**

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*Any references within the CE documents to the need to reseed, restore, reclaim or revegetate should include specific language requiring the use of native plant seed and local native plants in any areas supporting native plant communities.*

Response:

The BLM appreciates this suggestion for improving the conservation easements, however, the Bureau has determined that the conservation easements would adequately protect the resource values of the Federal Parcels as currently written.