

DECISION RECORD

HAGENBARTH LAND EXCHANGE Environmental Assessment MT-050-08-44

State: Montana
Field Office: Dillon
Counties: Beaverhead, Madison

Serial No. MTM-97761
Action: Land Exchange
Proponent: James F. and David J. Hagenbarth

It is my decision to select the Proposed Action Alternative as described in Environmental Assessment MT-050-08-44, and approve a land exchange proposal between the Bureau of Land Management (BLM) and James F. and David J. Hagenbarth, the proponents.

In the Proposed Action Alternative, the BLM will convey by patent to the Hagenbarths, the Federal lands and interest in land described in Exhibit A being three parcels of Federal lands in Beaverhead and Madison Counties totaling 238.11 acres of surface and mineral estate. In return, the Hagenbarths will convey by warranty deed to the United States the lands and interests in land described in Exhibit B, being three parcels of non-Federal land in Beaverhead County totaling 99.54 acres of surface and mineral estate. All other Federal lands, totaling 165.25 acres, identified for exchange in the Notice of Exchange Proposal (NOEP) published, have been excluded from the exchange to achieve closer equalization in value and will not be conveyed. The decision to exclude 165.25 acres was based on the need to transfer lands utilizing aliquot part legal descriptions. See Exhibits A, B, and C for legal descriptions, reservations, and map for the lands included in the exchange.

In the absence of any protests, the decision to exchange the selected Federal lands for the offered non-Federal lands will become the final determination of the Department of the Interior.

Rationale for Decision

The decision to exchange 238.11 acres of selected Federal lands to acquire 99.54 acres of non-Federal lands is consistent with the criteria for land exchanges established in the Federal Land Policy and Management Act of October 21, 1976, as amended (43 U.S.C. 1716) and the Dillon Resource Management Plan (RMP) approved in 2006. BLM is authorized to complete exchanges of Federal lands for non-Federal lands which are determined to be in the public interest.

Public Interest Determination

The impact of the land exchange on the natural resource values on both the Federal and non-Federal lands was analyzed in the environmental assessment. Based on that analysis, I have determined that the lands and interests in land to be exchanged pursuant to the exchange agreement between BLM and the proponents, as modified by this Decision Record, is in the public interest because:

- A. Acquisition of the non-Federal lands will result in the Federal acquisition, connectivity, and protection of important wetlands, wildlife and riparian habitat on the Lower Big Hole River which is important to numerous wildlife species, including migratory birds and other game and non-game species. BLM management will ensure that the habitats for existing wildlife species will remain unaltered/unfragmented and provide optimal habitat conditions for all

wildlife species and therefore the effects will be expected to be beneficial with BLM management of the acquired lands. The non-Federal lands are not specifically inventoried for exact quantity of wetlands and associated floodplain acreage at present, but conservatively estimated to be approximately 75 acres, resulting in a net gain to the United States of about 55 acres of good condition wetlands and floodplains.

The exchange will consolidate an isolated 40-acre Federal parcel with the non-Federal lands thus providing BLM with a large contiguous block of Federal land that would result in an additional ½ mile river access, thereby increasing the opportunities to achieve natural resource management objectives on the surrounding Federal lands.

Transferring the selected Federal lands into private ownership will not result in significant impacts to wildlife habitat or other natural resources because the proponents intend to retain the land and continue with their ranching operations. The BLM will also be able to discontinue administering a small 7-acre land use permit.

- B. The exchange will result in the consolidation of both Federal and non-Federal lands and allow for more cost-effective and efficient management of both interests. Acquisition of the non-Federal parcels will eliminate the risk of residential subdivision and development of the non-Federal lands and the adverse impacts to the natural resources on the surrounding Federal lands resulting from such development. Grazing will not be authorized unless later needed to achieve a resource objective such as noxious weed control. The old perimeter fence along the south side of Parcel C will be replaced by BLM.

Acquisition of the Federal lands by the proponents will consolidate their lands for ranching and eliminate an isolated Federal parcel with no public or direct physical access.

- C. A BLM mineral report has been prepared for the Federal lands included in the exchange. The exchange of Federal lands proposed will have little to no impact to fluid and solid minerals resources, as there is low to no potential for leasable, saleable and locatable minerals on the acquired lands. Low potential for mineral resources is outweighed by the benefits of the proposed exchange. The Mineral Potential Report concluded that the parcels be exchanged and the mineral estate not be reserved to the Federal government. Both surface and subsurface estates will be included in the conveyance.
- D. The exchange of the selected Federal lands will not result in significant adverse impacts to the one right-of-way which was granted in perpetuity for Federal Aid Highway purposes to the Montana Highway Commission and will be reserved to the United States in the patent. The patent will also include a reservation to the United States for a right-of-way for ditches and canals under the authority of the Act of August 30, 1890. The two-year grazing notices were sent to the grazing permittees on September 3, 2008, and a copy of the NOEP was sent to them on August 2, 2010. The grazing waivers were signed for one of the parcels and not signed for the other two; however they are not needed, as the permittee and patentee are the same entity. Grazing permit fees will be adjusted on a prorated basis upon closing.

The intended and most likely foreseeable future use of the selected Federal lands after they are transferred to the proponents is continuation of the existing ranching business, which will not conflict with management objectives on other Federal lands in the area. There are no Indian trust lands in the

vicinity of the Federal exchange parcels. There are no cultural resources eligible for the National Register of Historic Places or significant paleontological resources on any of the Federal exchange parcels.

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

Equal Value Requirements

The properties involved in this land exchange were appraised in accordance with Federal standards and regulations. All reservations, restrictions, and encumbrances that will be included in the conveyance documents for both the Federal and non-Federal lands were identified and considered in the appraisals. The review appraiser for Montana BLM Projects of the Department of the Interior, Office of Valuation Services approved the values for both the Federal and non-Federal lands as follows:

Non-Federal Lands – 3 parcels encompassing 99.54 acres = \$363,000.00

Parcel A	8.75 Acres	\$ 17,276.42
Parcel B	8.47 Acres	\$ 16,723.58
Parcel C	<u>82.32 Acres</u>	<u>\$ 302,027.35</u>

3 Parcels of Non-Federal Land 99.54 Acres \$ 363,000.00

Federal Lands – 3 parcels encompassing 238.11 acres = \$373,386.49

Parcel 1	40.00 Acres	\$ 116,000.00
Parcel 2	121.59 Acres	\$ 157,970.94
Parcel 3	<u>76.52 Acres</u>	<u>\$ 99,415.55</u>

3 Parcels of Federal Land 238.11 Acres \$ 373,386.49

The appraised value of the Federal lands is \$10,386.49 more than the non-Federal lands. A cash equalization payment in the amount of \$10,386.49 will be made to the United States by the proponents.

Conformance with the Land Use Plan

Disposing of the Federal lands to acquire the non-Federal lands is consistent with the Dillon RMP approved in February 2006. The Federal and non-Federal exchange lands are in an area categorized in the RMP as a retention area, with limited adjustment. Lands within this category can be exchanged for lands or interest in lands located anywhere within the State of Montana. The Federal lands are not available for sale under section 203 of the FLPMA, but limited disposal actions may occur based on site-specific application of the land ownership adjustment criteria as depicted on pages 38 and 39 of the RMP. The disposal of the Federal lands will meet the criteria for consideration, given the opportunity to secure important objectives of protection of fish and wildlife habitats, riparian areas, and enhancement of recreation opportunities and public access provided by acquisition of the non-

Federal lands. The non-Federal lands will meet the acquisition criteria outlined on Appendix H, page 129 of the RMP.

The proposed exchange is also in conformance with the “Supplement to State Director Guidance for Resource Management Planning in Montana and the Dakotas” for “Land Pattern Review and Adjustment” (1984) and for “Access” (1989). This supplement was published to provide guidance for all major types of land adjustment. The outstanding values on the non-Federal lands and the opportunities for land consolidation and gaining additional access to public land and resources are all criteria given for acquisition purposes in the supplemental guidance. The non-Federal lands proposed for acquisition are located in a retention zone as identified in this Supplement. The BLM lands proposed for conveyance also lie in a retention zone, but under the guidance can be used if conveyance results in significant public benefits.

The Dillon RMP specifically provides for the withdrawal of areas which have values higher than values for mineral production. The character of the wetland, riparian, and fishery values, coupled with the scenic beauty and recreational uses on the parcel, justify withdrawal of these lands.

Relationship to Statutes, Regulations, or Other Plans

BLM is authorized to complete exchanges of Federal lands for non-federal lands where it is determined to be in the public interest. The authority for these exchanges is the Federal Land Policy and Management Act of October 21, 1976, as amended (43 V.S.C. 1716), and the regulations at 43 CFR 2200.

Summary of Public Involvement

The public was informed of the proposed exchange by a public information meeting on May 31, 2007 and publications of a NOEP in the local newspaper in July and August 2010. Notices of the proposed exchange were also sent to 25 entities that had previously expressed an interest in BLM's land exchange program and/or had affected interests associated with the BLM exchange parcels. This included adjacent landowners, grazing permittees, elected officials of both local and state governments, and other interested parties and groups. The public meeting received support from all seven people who attended, including two Beaverhead County Commissioners.

Comments and Issues Raised by the Public

In response to publications of the NOEP, BLM received one comment from a right-of-way holder (Montana Department of Transportation/Montana Highway Commission) addressing their interest to protect the public's interest in the highway right-of-way by requesting the BLM make the patent subject to the right-of-way. One written comment was also received in support of the exchange. The Federal lands will be conveyed with a reservation in the patent for a right-of-way for Federal Aid Highway purposes which has been reserved to the Montana Highway Commission, its successors and assigns, by right-of-way MT-GF-0-86494, pursuant to the Act of November 9, 1921 (042 Stat. 0216).

Mitigation: None identified.

Finding of No Significant Impact

I have reviewed environmental assessment MT-050-08-44 and have determined that approving the

EXHIBIT A

Hagenbarth Land Exchange Federal Land

T. 4 S., R. 9 W., P.M.M.

- Parcel 1 (40 acres)

sec. 11, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

Reservations to the United States

1. Right-of-way for ditches or canals.

T. 5 S., R. 8 W., P.M.M.

- Parcel 2 (121.59 acres)

sec 6: Lots 4, 5, 6, and 8.

Reservations to the United States

1. Right-of-way for ditches or canals.
2. Federal Aid Highway right-of-way MT-GF-0-86494.

- Parcel 3 (76.52 acres)

sec 7: Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Reservations to the United States

1. Right-of-way for ditches or canals.

EXHIBIT B

Hagenbarth Land Exchange Non-Federal Lands

T. 5 S., R. 8 W., P.M.M.

- Parcel A (8.75 acres)

Parcel 2B of Certificate of Survey 1601BA, filed for record in the Clerk and Recorder's Office of Beaverhead County, Montana on March 3rd, 2010 at 9:45 A.M., Document 271947 and in Madison County, Montana on March 10, 2010 at 1:00 P.M., Document Number 135133 and being a parcel of land comprising that part of Lot 4 which lies south and west of the thread of the Big Hole River, Section 4, Township 5 South, Range 8 West, Principal Meridian, Montana and Book 7 of Surveys, Page 2122-Ba.

- Parcel A (8.75 acres)

Parcel 3A of Certificate of survey 1601BA, filed for record in the Clerk and Recorder's Office of Beaverhead County, Montana on March 3, 2010 at 9:45 A.M., document Number 271947 and in Madison County, Montana on March 10, 2010 at 1:00 P.M., document Number 135133, and being a parcel of land comprising that part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ which lies south and west of the thread of the Big Hole River, Section 4, Township 5 South, Range 8 West, Principal Meridian Montana. Book 7 of Surveys, Page 2122-BA.

- Parcel C (83.32 acres)

Amended Certificate of Survey 1371BR, filed for record in the Clerk and Recorder's Office of Beaverhead County, Montana on January 13, 2006 at 3:15 P.M., Document 258735, and being a parcel of land located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 5 South, Range 8 West and the West $\frac{1}{2}$ of Section 4, Township 5 South, Range 8 West P.M.M., County of Beaverhead, State of Montana, and more completely described as follows: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T.5S., R.8W., P.M.M., ALSO the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T.5S., R.8W., P.M.M., previously a portion of Remainder Parcel 2, COS 621. Deed Reference: Book 204, Page 133 on file in the Beaverhead County Clerk and Recorder's Office.