UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT COC-64971

AGREEMENT TO INITIATE A LAND EXCHANGE

This Agreement to Initiate (ATI) a land exchange is made this **18th** day of **May** , 2005, pursuant to Section 206 of the Act of October, 21, 1976 as amended, 43 USC 1716, between the Bureau of Land Management on behalf of the United States of America, hereinafter called BLM, Robin L. Morley, and Phantom Canyon Ranch Land and Cattle Company, LLC, a Colorado Limited Liability Company, hereinafter called the proponent.

**Whereas**, the proponent hereby certifies that it has ownership or control of the nonfederal lands and will have the ability to provide clear title to such lands at the time the proposed exchange is consummated.

**Whereas**, the proponent hereby certifies that it is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof.

**Whereas**, the above-identified parties desire to express their intent to accomplish an exchange of certain lands and to establish certain terms and conditions for the exchange, do therefore agree as follows:

1. DESCRIPTION OF LANDS OR INTEREST IN LANDS BEING CONSIDERED FOR EXCHANGE.

A. Subject to the terms and conditions set forth below, the proponent agrees to convey to BLM certain nonfederal lands, as described in Exhibit A, subject only to the reservation and exceptions agreeable to BLM.

B. BLM agrees to convey to the proponent the federal lands as described in the attached Exhibit B. Except for the third-party interests shown on Exhibit B, reservations and exceptions to be included in the federal land patent will be determined as the exchange is processed.

C. The parties agree that, to the maximum extent possible, the exchange will include all of the interests in the lands proposed for exchange, including but not limited to the mineral, timber, grazing use, water rights, and all other interests, except for those interests specifically reserved and shown on Exhibits A and B.

D. The parties understand that the exchange will be based on appraised values. The lands described in Exhibits A and B may be modified to equalize the values in accordance with federal regulations. If necessary to equalize values, the parties agree that federal land in the Dakota Ridge Parcel would be dropped from the exchange as the first priority, followed by the Soda Springs Parcel.

2. EXCHANGE PROCESSING STEPS

A. Each party will, to the extent possible, use the following schedule as a guide to processing this exchange. The parties understand that the schedule is a best estimate of time required to accomplish each step of the exchange process. The parties further understand that if events which are beyond the control of the respective parties interfere with the completion of any step of the exchange, there will be no legal recourse for either party. The schedule may be revised as needed.

B. In processing the exchange, the following steps will be accomplished by the party indicated and all efforts will be made to complete the steps by the target dates indicated.

|  |  |  |  |
| --- | --- | --- | --- |
| Step | Completion Date | Responsible Party | Cost Estimate |
| Feasibility Report/Draft ATI | September 2004 | BLM | $2,500 |
| Preliminary Title Evidence | Completed | Proponent | $200 |
| Solicitor's Feasibility Review. | October 2004 | BLM/Solicitor | $500 |
| WO Feasibility Review | November 2004 | BLM/WO | $1,000 |
| Notice of Exchange Proposal | January 2005 | BLM/ | $150 |
|  |  | Proponent | $100 |
| Preliminary Title Opinion | January 2005 | BLM/Solicitor | $500 |
| Cultural Resources Inventory | Completed | BLM | $4,000 |
| Native American Consultation | Completed | BLM | $1,000 |
| Hazardous Materials Survey | Completed | BLM | $1,000 |
| CERCLA Report | Completed | BLM | $500 |
| Mineral Report | Completed | BLM | $1,000 |
| Appraisal Preparation | March 2005 | Proponent | $6,500 |
| Appraisal Review | May 2005 | Proponent | $6,900 |
| Environmental Assessment | June 2005 | BLM | $4,000 |
| Solicitor's Decision Review | July 2005 | BLM/Solicitor | $500 |
| WO Approval to Proceed | August 2005 | BLM | $1,000 |
| Notice of Decision Published | August 2005 | Proponent | $150 |
| Title Insurance Policy | October 2005 | Proponent | $1000 |
| Patent Preparation | October 2005 | BLM | $500 |
| Final Title Opinion | October 2005 | BLM/Solicitor | $500 |
| Closing | October 2005 | Proponent/ | $500 |
|  |  | BLM | $500 |
| Total Estimated Costs | Proponent =$15,350 | BLM =$19,150 | |

C. Each party will provide the other with survey plats, maps, aerial photographs, survey comer information, and other information, as appropriate, to aid in the identification of the lands to be exchanged. BLM will provide the proponent with copies of USGS maps, GIS maps and any other maps necessary for use in field examinations, reports, or other documents necessary to complete the required administrative actions.

3. PRELIMINARY TITLE EVIDENCE AND TITLE INSURANCE POLICY

A. The proponent agrees to furnish preliminary title evidence for the nonfederal land in accordance with the exchange schedule. The proponent also agrees to provide one copy of all liens, reservations, and encumbrances affecting the nonfederal land. If the exchange is approved for closing, the proponent agrees to convey title to the nonfederal land by warranty deed; and to provide a title insurance policy, prepared and issued by a qualified title company and issued on the approved ALTA form U.S. Policy 9/28/91, in the amount of the approved market value for the nonfederal land.

B. BLM will obtain a preliminary opinion of title for the nonfederal land in accordance with the exchange schedule. The proponent agrees to make every reasonable effort to eliminate any and all liens and encumbrances that may exist on the nonfederal lands and which would preclude the United States from receiving acceptable title. BLM will provide the proponent with a copy of the preliminary title opinion for use in eliminating any unacceptable encumbrances.

C. In the event that, at the time of closing, liens for taxes or assessments for special improvement districts for the current year do exist on the offered nonfederal lands, which amounts have not yet been calculated and which are not yet payable, the proponent agrees to deposit the appropriate amount with the title company in escrow for the payment of taxes and assessments and have those items removed from the title policy. In any case, the proponent agrees to be liable for any and all taxes and assessments that have accrued on the offered nonfederal lands to the date title is transferred.

C. If the decision is to approve the exchange, BLM will convey title to the federal lands by federal land patent. The patent will reserve to the United States a right-of-way for ditches and canals under the Act of August 30, 1890 (43 U.S.C. 945), and may be subject to other reservations, exceptions, or encumbrances deemed necessary as the result of the studies and analyses conducted for the exchange. BLM agrees to provide the proponent with a draft patent for review before the exchange is scheduled for closing.

D. The parties agree that, effective on the date this ATI is signed, no additional reservations, exceptions, covenants, restrictions, or encumbrances shall be placed on either the federal or nonfederal lands described in Exhibits A and B without notice to, and an opportunity for comment by, the other party. The need to place such reservations, exceptions, covenants, restrictions, or encumbrances on a particular parcel may be grounds for the other party to refuse to accept title to that parcel.

E. Either party may refuse to accept a parcel of land proposed to be conveyed to it, and such parcel shall be excluded from the exchange, if any hazardous substance is discovered on the parcel prior to delivery of a patent or deed of conveyance to the other party, clear title to the parcel cannot be provided, or if the parcel contains a reservation, exception, covenant, restriction, or encumbrance that is objectionable to the receiving party.

**4. APPRAISAL PROVISIONS**

A. BLM will arrange for an appraisal of the federal and nonfederal lands in accordance with the exchange schedule. The appraisals will be completed by a contract appraiser selected by the Department of the Interior's (DOI) Appraisal Services Directorate in consultation with BLM and the proponent. The appraisals will be completed in accordance with BLM and Department of Justice standards as prescribed in 43 CFR 2201.3 and using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisition.”

B. The final appraisal shall be subject to the review and approval of a DOI-designated Review Appraiser. The parties agree that the appraisal reports are being prepared for use by the federal government and will be subject to release and public review after they have been approved by the DOI Review Appraiser and when a decision to approve or disapprove the exchange has been made by BLM. The parties also agree that the federal government is the client for the appraisals and the approved appraisal reports shall be the property of the federal government.

C. The parties agree that if they accept the approved appraised values, those appraised values will provide the values of the federal and nonfederal lands to be used in equalizing and finalizing the exchange. The parties agree that the bargaining and arbitration provisions of 43 CFR 2201.4 shall not be employed in this exchange.

D. In order to equalize the agreed upon values of the lands involved in this exchange, the parties agree to take all reasonable efforts to equalize values by excluding federal lands in the Dakota Ridge Parcel, as the first priority, followed by the Soda Springs Parcel, as the next priority. In the event that values cannot be equalized by excluding lands without creating an unmanageable federal or nonfederal land ownership patter, cash equalization payments not to exceed twenty-five percent of the value of the Federal lands may be used.

**5. ASSUMPTION OF COSTS ASSOCIATED WITH EXCHANGE PROCESSING**

A. The Proponent agrees to pay the costs to complete the following tasks necessary to enable BLM to make a decision on the proposed land exchange:

(1) Preparation and review of appraisals to determine market value of the federal and nonfederal land;

(2) Remediation of hazardous materials on the nonfederal lands, if required;

(3) Publication of the Notice of Exchange Proposal and Notice of Availability of Decision in local newspapers; and

B. In addition to assuming the costs for preparation of the 3 items listed above, the Proponent agrees to pay for the cost of the title commitments on the offered private land, the cost of Title Insurance on ALIA U.S. Policy 9-28-91 form, and one-half of the customary closing costs (escrow costs) for this exchange transaction.

C. BLM agrees to pay the costs for completing the following required actions, in accordance with the exchange schedule:

(1) Preparation of a feasibility report;

(2) Conducting an environmental site assessment and preparing a-hazardous materials report on both the federal and nonfederal lands;

(3) Preparation and mailing of the Notice of Exchange Proposal and the Notice of Availability of Decision;

(4) Preparation of appraisal requests; and

(5) Review of the environmental assessment.

D. BLM agrees to pay for the costs of the preparation of the 5 items listed above, and one-half of the customary closing costs (escrow costs) for the exchange transaction.

E. Any additional costs of processing the exchange that may be determined in the course of processing the exchange and which are not identified in this paragraph will be negotiated by the parties at that time.

F. The parties agree that the compensation for costs provisions of 43 CPR 2201.1-3 will not be employed in this exchange.

6. HAZARDOUS SUBSTANCES

A. Each party to this ATI hereby declares that to their knowledge there have been no known or suspected release, storage, or disposal of hazardous substances on the offered or selected lands involved in the exchange. If hazardous substances are determined to exist on the offered or selected lands BLM or the Proponent may choose to conduct further investigation and / or perform necessary remediation on the contamination site; remove the lands so affected from the exchange; or terminate the exchange.

B. Any hazardous substances found on the property to be acquired by the federal government must be remediated in accordance with federal requirements prior to acceptance of title by the United States.

7. PHYSICAL ACCESS, RIGHT TO ENTER

A. The parties to this agreement hereby grant permission to the other parties to enter and physically examine the lands offered by the other party. Such examination shall be by non-surface disturbing methods.

8. RELOCATION

A. Pursuant to 49 CFR 24.101, this ATI serves as a formal notice to the proponent of the voluntary nature of this exchange and that the nonfederal lands are being acquired by the United States on a voluntary basis.

B. The parties agree that relocation benefits will not be paid and are not applicable to the proponent. In addition, the proponent certifies and agrees that this exchange is a voluntary action and that relocation benefits are not applicable to owner-occupants. The proponent certifies that to the best of their knowledge, there are no other parties currently occupying the nonfedera1land who would be eligible for relocation benefits and that no parties have been removed from the nonfederal land.

9. CLOSING

A. The exchange will not close until all clearances, reports, environmental assessment, and appraisals, are completed, reviewed, and accepted or approved by BLM. If, as a result of the inventories, studies and reports, BLM determines that the exchange is compatible with federal policies and programs, is in compliance with exchange regulations, and is determined to be in the public interest, BLM will request approval from its Washington Office to issue a Notice of Availability of Decision and to close the exchange. If the processing steps are completed as scheduled, closing is estimated to occur by the end of October 2005.

B. Upon successful completion of all applicable requirements as detailed in this ATI, the contemplated land exchange will close in the manner generally described below:

(1) Pursuant to 43 CFR 2201.9, title to the nonfederal and federal lands will be transferred simultaneously through escrow procedures. All escrow costs will be divided equally between the parties.

(2) Prior to closing, the Proponent will deposit in escrow, a warranty deed conveying the nonfederal lands to the United States of America, subject to those reservations and exceptions permitted in the preliminary title opinion, and a policy of Title Insurance (ALTA U.S. Policy 9-28-91), in an amount equal to the approved value of the nonfederal lands, showing title vested in the United States and free From all encumbrances except those permitted in the Preliminary Title Opinion.

(3) Prior to closing, BLM will deposit in escrow, a land patent conveying the federal lands to the proponent, and upon notice that the proponent has complied with the above-stated requirements, BLM will immediately request a final opinion of title and when title is determined to be acceptable to the United States, BLM will provide a copy of the final title opinion to the escrow officer, and the exchange will be closed in accordance with the escrow instructions.

C. If required, the responsible party will deposit in escrow prior to closing any necessary equalization payment as provided for in 43 CFR 2201.6.

10. AMENDMENT OF AGREEMENT

A. This ATI may be amended by consent of the parties.

B. This ATI may be terminated at any time upon 30 days prior written notice by either party.

11. NON-BINDING NATURE OF AGREEMENT

A. Performance by the United States of the terms of this A TI is dependent upon the availability of appropriated funds. This ATI does not legally bind any party to

proceed with processing or to consummate the proposed exchange, or to reimburse or pay damages to any party to this proposed exchange, or anyone doing business with any such party. The withdrawal from, and termination of, this exchange proposal or ATI by the BLM authorized officer at any time prior to the notice of decision is not protestable or appealable under the regulations at 43 CFR part 4.

B. Completion of this proposed exchange is subject to the provisions of 43 CFR Part 4, Department of Interior Hearings and Appeals procedures, and in the event of a protest or appeal following the notice of decision, is contingent upon final disposition of that protest or appeal.

For the purposes of processing this proposed exchange, the contacts for each party shall be the individuals identified below:

For BLM:

Debbie Bellew

Realty Specialist

Royal Gorge Field Office

3170 East Main Street

Canon City, CO 81212

Phone: (719) 269-8514

FAX: (719) 269-8599

For Proponent:

Mark Morley

Phantom Canyon Ranch and Cattle Company, LLC,

a Colorado Limited Liability Company

20 Boulder Crescent, 2nd floor

Colorado Springs, CO 80903

Phone: (719) 471-1742

Cell: (719) 499-4390

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate as of the last date shown below.

By: ***Roy L. Masinton*** ***5/18/05***

Roy L. Masington, Field Manager Date

Bureau of Land Management

Royal Gorge Field Office

By: *Robin L Morley* 5/10/05

Robin L. Morley Date

By: Mark Morley 5/10/05

Mark Morley Date

Phantom Canyon Ranch and Cattle Company, LLC

A Colorado Limited Liability Company

Attachments:

Exhibit A

Exhibit B

Exhibit A

**Legal Land Description**

**Nonfederal Lands**

Sixth Principal Meridian, Colorado

T. 17 S., R. 69 W.,

section 7, S½SE¼, (80 acres)

section 8, S½S½, (160 acres)

section 17, all; (640 acres) ,

section 18, lots 2, 3, 4, NE¼, E½SE¼, and E½W½; (522.19 acres)

section 19, lot 1, E½E½, SW¼NE¼, and NE¼NW¼; (280.24 acres)

section 20, SE¼NW¼, W½W½, and SE¼SW¼; (240 acres)

section 29, N½NW¼, (80 acres)

T. 17 S., R. 70 W.,

section 13, NE ¼, and E ½ SE ¼ (240 acres)

Total Acres: 2,242.43

Encumbrances: Schedule B, Section 2, of the Commitment to Insure Title, lists several exceptions that will not be insured, including reservations to the United States for a right of way for ditches and canals constructed by the authority of the United States in the land patents issued for all of the nonfederal land; and all of the coal and other mineral rights in the patent recorded May 31, 1927 in Book 213, Page 255 and November 15, 1943 in Book 242, Page 272. It also lists a reservation of the right of a proprietor of a vein or lode mining claim to pursue extralateral rights on the lands included in a United States patents recorded September 8, 1923 in Book 158, Page 420 and April 20, 1909, in Book 54, Page 333. It also lists an exception for the apparent lack of access to and from the nonfederal land via a public street, road or highway, or via a privately granted easement; and the effect of the apparent land of access upon the marketability of the title to the land.

The United States owns all of the minerals in 1,762.43 acres of the above-described lands by virtue of prior patent reservations. The mineral estate in 480 acres of the lands, described as the S½SE¼ of section 7, the S½S½ of section 17, the N½NE¼ of section 18, and the W½NW¼, SE¼NW¼, and NW¼SW¼ of section 20, all in T. 17 S., R. 69 W., is privately owned and will be conveyed to the United States in the exchange.

Exhibit B

**Legal Land Description**

**Federal Lands Surface and Minerals**

Sixth Principal Meridian, Colorado

T. 17 S., R. 68 W.,

section 30, W½SE¼SW¼, S½SW¼, NE¼SW¼SE¼, and SE¼SE¼; (90 acres)

section 31, NE¼, S½NE¼NW¼, SE¼NW¼, NE¼SW¼, and W½SE¼; (340 acres)

section 32, NW¼NW¼. (40 acres)

T. 18 S., R., 68 W.,

section 7, lots 1,2,3, and 4. (167.52 acres)

T. 18 S., R. 69 W.,

section 1, lots 7, 8, 9, 10, and SW¼SE¼; (156.57 acres)

section 11, SE¼NE¼NE¼, SE¼SW¼NE¼, NE¼SE¼SW¼, and S½SE¼SW¼; (50 acres)

section 12, N½, and SE¼; (480 acres)

section 14, NE¼NW¼, and S½NW¼NW¼; (60 acres)

section 17, SW¼SW¼NE¼, SW¼NE¼NW¼, NW¼NW¼, S½NW¼, E½SW¼, S½NE¼SE¼, NW¼NW¼SE¼, S½NW¼SE¼, and S ½SE¼. (350 acres)

section 20, N½NE¼. (80 acres)

section 24, S½NW¼, W½SW¼, and W½SE¼. (240 acres)

Total Acres: 2,054.09

The Brush Hollow parcel (section 24, S½NW¼, W½SE¼, and W½SE¼, T. 18 S., R. 69 W., Sixth Principal Meridian, Colorado) has been heavily impacted by recreational off-highway vehicle use.

Encumbrances:

(1) Those rights for Fremont County road purposes recognized under right-of-way Colorado 44142, across the W½SE¼SW¼ of section 30, T. 17 S., R. 68 W., and the W½SE¼ of section 24, T. 18 S., R. 69 W., all in the Sixth Principal Meridian.

(2) Those rights for electrical power transmission and access road purposes reserved to the Department of Energy, Western Area Power Administration, by right-of-way Colorado 0128242, under the Act of October 21,1976 (43 U.S.C. 1767), across the NE¼NW¼ of section 14, T. 18 S., R. 69 W., Sixth Principal Meridian.

(3) A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

The patent to the Soda Springs parcel (section 30, W½SE¼SW¼, S½SW¼SE¼, NE¼SW¼SE¼, and SE¼SE¼; section 31, NE¼, S½NE¼NW¼, SE¼NW¼, NE¼SW¼ and W½SE¼; section 32, NW¼NW¼, T. 17 S., R. 68 W., Sixth Principal Meridian, Colorado) will be subject to the right of the existing grazing lessee to continue grazing use under grazing allotment 05019 for a period of two years from the date the lessee is notified that the BLM is considering disposal of the parcel, unless the grazing lessee waives the right.

The patent to the Penrose Commons parcel (section 7, lots 1, 2, 3, and 4, T. 18 S., R. 68 W., Sixth Principal Meridian, Colorado, and section 1, lots 7, 8, 9, 10, and SW¼SE¼; section 11, SE¼NE¼NE¼, SE¼SW¼NE¼, NE¼SE¼SW¼, and S½SE¼SW¼; section 12, N½ , and SE ¼; and section 14, NE¼NW¼, and S½NW¼NW¼, T. 18 S., R. 69 W., Sixth Principal Meridian, Colorado) will be subject to the right of the existing grazing lessee to continue grazing use under grazing allotments 15032 and 05119 for a period of two years from the date the lessee is notified that the BLM is considering disposal of the parcel, unless the grazing lessee waives the right.

The patent to the Brush Hollow parcel (section 24, S½NW¼, W½SW¼, and W½SE¼, T. 18 S., R. 69 W., Sixth Principal Meridian, Colorado) will be subject to the-right of the existing grazing lessee to continue grazing use under grazing allotment 05183 for a period of two years from the date the lessee is notified that the BLM is considering disposal of the parcel, unless the grazing lessee waives the right.

The patent to the Dakota Ridge parcel (section 17, SW¼SW¼NE¼, SW¼NE¼NW¼, NW¼NW¼, S½NW¼, E½SW¼, S½NE¼SE¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼; and section 20, N½NE¼, T. 18 S., R. 69 W., Sixth Principal Meridian, Colorado) will be subject to the right of the existing grazing lessee to continue grazing use under grazing allotments 05223 and 15011 for a period of two years from the date the lessee is notified that the BLM is considering disposal of the parcel, unless the grazing lessee waives the right.