**DECISION RECORD**

ENVIRONMENTAL ASSESSMENT CO-200-2005-0074

STATE: Colorado SERIAL NUMBER: COC-64971

FIELD OFFICE: Royal Gorge ACTION: Cooper Mountain Land Exchange

COUNTY: Fremont County

PROPONENTS: Robin L. Morley

Phantom Canyon Ranch Land and Cattle Company, LLC,

a Colorado Limited Liability Company

15 North Nevada Avenue

Colorado Springs, CO 80903

**DECISION**

It is my decision to select the Proposed Action Alternative as described in Environmental Assessment CO-200-2005-0074, and approve a land exchange proposal between the Bureau of Land Management (BLM) and Robin L. Morley and the Phantom Canyon Ranch Land and Cattle Company, LLC, the proponents.

The parties above initiated this single-transaction exchange in an effort to accomplish the land adjustment objectives of the BLM.

In the Proposed Action Alternative, eight parcels of federal lands, totaling 1904.09 acres will be conveyed to the proponents by the United States. All other Federal lands, totaling 150 acres, identified for exchange in the Notice of Exchange Proposal (NOEP) published beginning May 25, 2005, have been excluded from the exchange and will not be conveyed. To avoid unmanageable split estate, the mineral estate and the surface estate on the federal lands will be conveyed to the proponent. The non-federal land consisting of an inholding totaling 2242.43 acres, owned by the proponents will be conveyed to the United States. By virtue of prior patent reservations, the United States owns the minerals on 1762.43 acres of the non-federal lands. The remaining mineral estate (480 acres) in the non-federal lands will be re-conveyed to the United States with the surface. All of the lands involved in the exchange are located in Fremont County, Colorado. The lands proposed for exchange are described in Attachment 1.

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 1904.09 acres of selected federal lands to acquire 2242.43 acres·(1762.43 acres of surface estate and 480 acres of surface and mineral estate) 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 Royal Gorge Resource Management Plan (RMP) approved in 1996. 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 offered non-federal and selected 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:

1. Acquisition of the nonfederal lands will result in the federal acquisition, connectivity, and protection of significant wildlife and migratory bird habitats. The golden eagle, flammulated owls, peregrine falcons, Williamson's sapsuckers and the Grace's warblers are listed on the US Fish and Wildlife Service Birds on Conservation Concern - 2002 List BCR 16 - Southern Rockies/Colorado Plateau. These species have been identified as species that may be found on Cooper Mountain, have declining populations, and should be protected from habitat alterations. The acquisition parcel is significant habitat for elk, mule deer, black bear, mountain lion and Merriams' turkey. The precipitation maintains perennial stream flow in Felch Gulch and Six Mile Creek serving as those streams headwaters. The acquisition will provide for multiple outdoor recreational opportunities including hiking and horseback riding; protect the scenic quality of Cooper Mountain thereby enhancing the recreation character and setting of the Gold Belt Tour National Scenic Byway.

The exchange will eliminate a private inholding within a large block of federal lands, thereby increasing the opportunities to achieve natural resource management objectives on the surrounding federal and state-owned 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.

1. 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 parcel will eliminate a private inholding within a large block of federal and state land making natural resource management on adjacent federal and state-owned lands more cost effective and efficient. It 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. Acquisition of the federal lands by the proponents will consolidate their lands for ranching and eliminate management conflicts with the BLM.
2. Acquisition of the non-federal lands will consolidate federal ownership, improve public access to public lands, and significantly enhance opportunities for public recreation and public access big game hunting. With clearing and reconstruction of existing roads and trails and some new trail construction, a 12-mile long trail for hiking and horse riding would be extended across the Cooper Mountain parcel from Oil Well Flats to Phantom Canyon. The federal disposal lands currently have limited value for recreation. The eight parcels are located in lower elevations on rough, rocky hogbacks on steep slopes; they contain no perennial streams, or water of any nature. Further, the federal parcels are isolated and intermingled with private land. Only 100 acres of the federal land parcels has legal vehicular access, 804.09 acres are accessible to the public by foot or horseback from adjacent larger blocks of BLM and 1000 acres are inaccessible. The lack of access and the physical characteristics of the federal land parcels restrict public use including hunting and other forms of outdoor recreation.
3. Transferring the selected federal lands to the proponents will result in better management of these lands to meet the needs of local communities and residents. The eight federal land parcels, ranging in size form 10 acres to approximately 804 acres, are difficult and uneconomic for the federal government to manage. Their isolation and lack of access has resulted in a low level of on-the-ground management for many years. The proponents selected the federal disposal parcels because they wish to consolidate their ownership and therefore improve and enhance the management potential of their ranch.
4. A BLM mineral report has been prepared for the federal lands included in the exchange. The federal government owns 1762.43 acres of the mineral estate under the non-federal lands by virtue of prior patent reservations. The remaining mineral estate (480 acres) in the non-federal lands will be re-conveyed to the United States with the surface. Reuniting the surface and mineral estate (1762.43 acres) and acquiring the mineral estate along with the surface estate (480 acres) will facilitate future mineral development potentia1. The mineral report concluded that the interest and marketability of the potential mineral deposits (such as surface stone) on the federal lands is relatively low. To avoid· unmanageable split estate, the mineral estate and the surface estate on the federal lands will be conveyed to the proponent. The patent for the federal land parcels will reflect this recommendation.
5. The exchange of the selected federal lands will not result in significant adverse impacts to the two rights-of-way which were granted in perpetuity and a proposed perpetual nonexclusive reciprocal road right-of-way. The rights-of-way include: 1) two county roads, and 2) a power transmission line authorized pursuant to FLPMA to Department of Energy, Western Area Power Association, Rocky Mountain Region. The power transmission line is also an existing encumbrance on the surrounding proponent-owned private lands where it is currently authorized by way of a private easement. The county roads provide access to 100 acres of federal lands. The proposed perpetual nonexclusive reciprocal road right-of-way will be authorized pursuant to FLPMA to Summit Pressed Brick and Tile Company. The federal lands will be conveyed to the proponent subject to the county roads and the reciprocal right-of-way; the patent will include an exception for and reservation to the United States for the power transmission line. Grazing permittees have relinquished their grazing privileges and have waived their right to a 2-year continuation of their privileges upon transfer of the federal land out of federal ownership.
6. Acquisition of the nonfederal lands will result in protection and acquisition of habitat connectivity for threatened, endangered, and sensitive species. While sensitive species are not federally protected, it is BLM policy to manage these species to prevent future listing. The following species: Mexican spotted owl (threatened-critical habitat), Northern goshawk (BLM Sensitive), and the peregrine falcon (BLM Sensitive) all occur on Cooper Mountain. The entire parcel is within critical habitat designated by the US Fish and Wildlife Service in 2004. The nonfederal lands are not specifically inventoried for exact quantity of riparian or wetland acreage at present, but conservatively estimated to be approximately 20 acres. Because of the headwater nature of Cooper Mountain, between 1 and 2% of the total acquisition acreage would be wetland resulting in a substantial net gain of these resources.

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 Lead Appraiser for Colorado BLM Projects in the Mountain Region of the Department of the Interior Appraisal Services Directorate approved the values for both the federal and non-federal lands.

The total approved value .of the federal land is $1,349,000; the approved value of the non-federal lands is $1,345,000. To minimize the cash equalization payment, the exchange proposal was modified by excluding 150 acres of federal land from the exchange. The decision to exclude 150 acres was based on the need to transfer lands utilizing aliquot part legal descriptions. In addition, this decision: 1) meets the goals of the proponent, and 2) the BLM retains contiguity of ownership. A cash equalization payment in the amount of $4,000 will be made to the United States by the proponents. As required in the regulations at 43 CFR 2201.1-2(3), the value difference between the federal and non-federal lands represented by the cash equalization payment in this exchange does not exceed 25 per cent of the total value of the federal lands.

**Hazardous Substances**

A CERCLA 120(h) records search completed on the federal land parcels found no indication that hazardous materials have been stored for a period of a year or more, or released, or disposed of on any of the subject federal lands.

A Level I environmental site assessment was completed and approved for the non-federal lands on August 14, 2002. No evidence of hazardous materials, petroleum, products, or other environmental liability was discovered on the non-federal parcels.

**Native American Consultation**

BLM consulted a total of sixteen Indian tribes concerning the proposed land exchange, none of whom provided information about, or expressed interest in, any particular historic properties of religious and cultural significance on the federal lands.

**Conformance with the Land Use Plan**

Disposing of the federal lands to acquire the non-federal lands is consistent with the Royal Gorge RMP approved in May 1996. The federal land consists of eight non-contiguous parcels that have been divided into four geographic areas. The Soda Springs parcel, the Penrose Commons parcel, the Brush Hollow parcel, and the Dakota Ridge parcel. The Soda Springs Parcel (470 acres), the Brush Hollow Parcel (240 acres), and a portion of the Penrose Commons Parcel (110 acres) (totaling 820acres) are designated in the RMP as Category I lands and are available for general disposal under applicable authority. The Dakota Ridge Parcel (280 acres) and the remaining 804.09 acres in the Penrose Commons Parcel (totaling 1084.09 acres) are identified as Category 3 lands in the RMP and can be disposed of only by exchange; (please refer to the Land Ownership Adjustment Map included in the Royal Gorge Resource Area Proposed RMP and Final Environmental Impact Statement dated January 1995). Only 100 acres of the federal land parcels have legal vehicular access, 804.09 acres are accessible to the public by foot or horseback from adjacent larger blocks of BLM and 1000 acres are inaccessible. The federal land can be disposed of by exchange if the exchange will result in an acquisition to improve manageability of federal lands and resources, enhance public access for outdoor recreation, and is otherwise in the public interest (see Record of Decision and Approved RMP dated May 1996, (see page 2-5-12 of the ROD and approved RMP). Federal acquisition of the 2242.43 acres of non-federal lands will enhance management opportunities for dispersed recreation; protection of significant T &E and BLM Sensitive species wildlife habitat; protection of watersheds; enhanced recreational opportunities; and improved public access to large blocks of federal and state-owned lands. The exchange therefore meets the objectives outlined in the Royal Gorge RMP to acquire lands to improve public access and provide values for public use. The exchange also meets the goals of Fremont County's Comprehensive Plan.

**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 publications of a Notice or Exchange Proposal (NOEP) in the local newspaper in May and June 2005 and through briefings with representative groups including the U.S. Fish and Wildlife Service and the Colorado Division of Wildlife. Notices of the proposed exchange were also sent to grazing lessees, adjacent landowners, elected officials of both local and state governments, and other interested parties and groups.

**Comments and Issues Raised by the Public**

In response to publications of the NOEP, BLM received one comment from an individual that has a residential lot within a subdivision adjacent to the Dakota Ridge parcel. His concern is outside the purview of the BLM and the EA does not address issues restricting development on federal land transferred out of federal ownership as to provide a buffer zone for private property owners.

The federal lands will be conveyed subject to valid existing rights.

**Finding of No Significant Impact**

I have reviewed environmental assessment CO-200-2005-0074 and have determined that approving the proposed exchange will not have any significant impacts on the human environment and that an environmental impact statement is not required. I have determined that the proposed exchange is in conformance with the approved land use plan and in the public interest as required by 43 CFR 2200.0-6(b)

**Implementation Period**

Implementation of this decision will occur upon expiration the 45-day protest period initiated by the publication of a Notice of Decision (NOD) (43 CFR 2201.7-1) and the resolution of any protests.

**RECOMMENDATION/APPROVAL**

*Linda McGlothlin 11/22/06*

Royal Gorge Field Manager Date