



August 25, 2015

Stan Benes, District Manager  
United States Department of the Interior  
Bureau of Land Management, Central Montana District Office  
920 NE Main Street  
Lewistown, MT 59457

**RE: 2015 Bullwhacker Land Exchange Proposal**

Dear Mr. Benes,

Please find attached our proposal for a land exchange that we submit as a reasonable alternative to constructing a new roadway in the Upper Missouri River Breaks National Monument.

Since our early conversations with the BLM in 2013, and reaching out to neighbors and public land users across the state, we have heard from countless entities who have expressed concerns and brought suggestions to improve our land exchange proposal. Over the past few months we have had meaningful and productive conversations with folks who recognize the benefits of land consolidation and improving access to some of the most beautiful public land in Montana. The attached proposal represents a starting point for discussion that we believe should end in a win-win-win situation for the BLM, public land users in Montana, and our own ranching operations.

We recognize that this is just the first step in a long process, but urge you to take up formal consideration of the exchange so we can engage in a dialogue focused on mutual respect and satisfaction of mutual goals. We are confident that we can arrive at a workable exchange that provides:

- Satisfaction of BLM's multi-use mandate,
- Protection of resources and objects within the Breaks Monument,
- Significant improvements in access to public lands for high-quality, multi-use recreational purposes in the Breaks as well as the Big and Little Snowy Mountains,
- Greater operational efficiency for BLM and cost-effectiveness for the American taxpayer, and
- Protection of NBar assets and investments which play a significant role in making these outstanding recreational access and hunting opportunities possible.

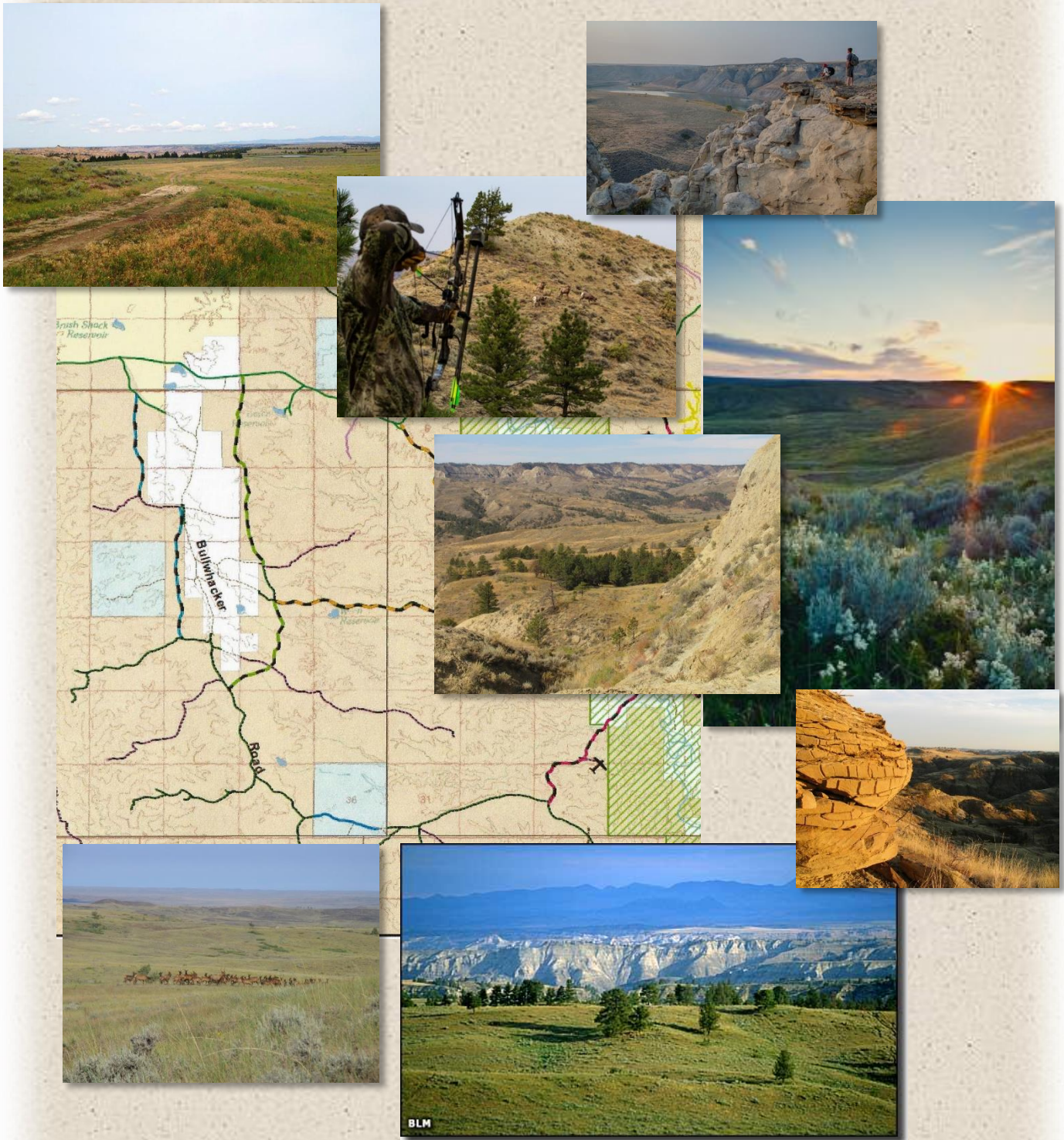
Our family has been blessed with the opportunity to fulfill a lifelong dream of owning property in Montana, and we have enjoyed the reception we have received from neighbors near and far in this great state. Our earnest hope is that this exchange is viewed as an opportunity to fulfill mutual objectives and build long-standing relationships with our neighbors in Montana.

We look forward to further conversation and welcome input from BLM and the public as this process proceeds.

Sincerely,

Farris Wilks  
Wilks Ranch Montana, Ltd.

# Wilks – BLM Bullwhacker Land Exchange Proposal



Prepared by Wilks Ranch Montana, Ltd.  
August 24, 2015

## **EXECUTIVE SUMMARY**

This document has been prepared to officially petition the Bureau of Land Management (BLM) to initiate a formal review of a land exchange proposal involving large tracts of private inholdings in and around the Upper Missouri River Breaks National Monument (Monument or Breaks Monument), and several isolated federal inholdings within the NBar Ranch.

Given the BLM's charge to protect the "objects" and resources within the Monument, this land exchange is proposed as a reasonable alternative to constructing a new roadway within the boundaries of a National Monument. Consolidation of lands under this proposal also provides much greater opportunity to protect, restore and enhance the environment in the Monument, and to more efficiently manage other BLM land holdings in the region.

### **Elements of the Land Exchange Proposal**

This proposal reflects the shared interests of the Wilks', the BLM and a broad array of landowner, sportsmen, conservation and recreation groups who have engaged in constructive dialogue in an attempt to satisfy as many needs and desires as possible, while still achieving the overall goal of the exchange. The proposal represents an equitable exchange of land, and a significant improvement in public access to public lands.

This proposal includes the following:

- The fee transfer of over 5,100 acres of private land to the BLM, over 3,600 of which lie within or immediately adjacent to the Breaks Monument. This provides permanent and indisputable access to over 50,000 acres of public land within the Monument that is currently inaccessible by motorized vehicle.
- The fee transfer of twelve (12) isolated federal inholdings to the NBar, totaling approximately 4,900 acres that consolidate private land and reduce agency management costs.
- A permanent access easement from Cow Island Road, across Anchor Ranch property, to access approximately 1,000 acres of land within the Monument for multi-use recreational and/or improved management purposes.
- A permanent access easement off the east side of Red Hill Road, across NBar property, to provide improved access to several thousand acres of USFS property for multi-use recreational purposes.

BLM has internal guidelines associated with the processing of a land exchange consisting of five distinct phases. The process is projected to take anywhere from 18 months to five years to complete, and provides several opportunities for public review and input.

The exchange proposal has been developed to provide greatly enhanced opportunity for better management of Federal lands by:

- securing large private inholdings within a National Monument,
- granting permanent and indisputable roadway access to the Monument,
- protecting objects of the Monument by eliminating the need for construction of a new, duplicative and potentially destructive roadway within the Monument,
- providing opportunity to protect, restore and enhance lands that have been inaccessible or in private ownership within the Monument, and
- eliminating isolated and inaccessible parcels from the agency's land management responsibility.

The exchange also provides opportunity for better protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreational opportunities and public access; and promotes multiple-use values by significantly improving multi-modal access to over 60,000 acres of public land.

### **Proposed Elk Management Strategy**

Through this exchange, Wilks also propose to open over 14,000 acres of private land associated with the NBar to managed public hunting, which would in turn provide access to an additional 1,920 acres of currently inaccessible public land not involved in the exchange. In combination with the exchange, this would provide greatly-enhanced, multiple-use access to over 26,000 acres of public and private land – just in Fergus County.

The elk management strategy will provide a high-quality hunt for far more Montanans than currently have access. The specific details of the strategy will be developed in collaboration with MFWP as the land exchange process moves forward. If BLM takes up formal consideration of this proposal, Wilks are willing to open managed access for the fall 2015 hunting season.

### **Ongoing NEPA Process**

BLM has initiated the review of several new roadway alignments inside the Monument under a formal NEPA process. Federal Code states that the NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)). The Wilks' submit that a land exchange is a reasonable alternative to new roadway construction, and must be formally considered in the ongoing NEPA process.

Wilks' implore the BLM to follow a rigorous and objective evaluation process, to fully consider the merits of the exchange based on BLM guidelines and federal code governing such transactions, and to solicit and consider, as appropriate, public comment on the proposal.

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## **1.0 INTRODUCTION**

This document has been prepared to officially petition the BLM to initiate a formal review of a land exchange proposal involving large tracts of private inholdings in and around the Upper Missouri River Breaks National Monument (Monument or Breaks Monument), and small, isolated federal inholdings within the NBar Ranch.

Figure 1-1 identifies the location and proximity of the subject BLM and private parcels. The figure also illustrates the strategic location of the private “Bullwhacker” inholding within the large and contiguous BLM holdings along the Missouri River. Casual observation also reveals how the BLM parcels within the NBar are far removed from any other significant BLM holdings and serve little to no strategic recreational or resource management purpose. This cursory view of the overall landscape of BLM ownership in the region suggests enough merit to examine the exchange in greater detail.

Wilks request that the exchange be processed openly and objectively under the provisions of Section 206 of the Federal Land Exchange Facilitation Act (FLPMA), Public Law No. 106-248, and the regulations at 43 CFR 2200, or more expeditiously under the provisions of the National Environmental Policy Act (40 CFR 1500).

BLM has made previous public statements regarding the Agency’s view that a land exchange was not a “viable option in the best interest of the American people who have entrusted the BLM to manage their public lands for them.” Wilks believe a fair and equitable exchange can be developed that satisfies mutual near term and long term objectives, thus this document outlines not just the land exchange proposal itself, but a preliminary assessment of how this proposal satisfies BLM evaluation criteria, and how it should be considered as a reasonable alternative in the ongoing NEPA analysis for access into the Breaks Monument.

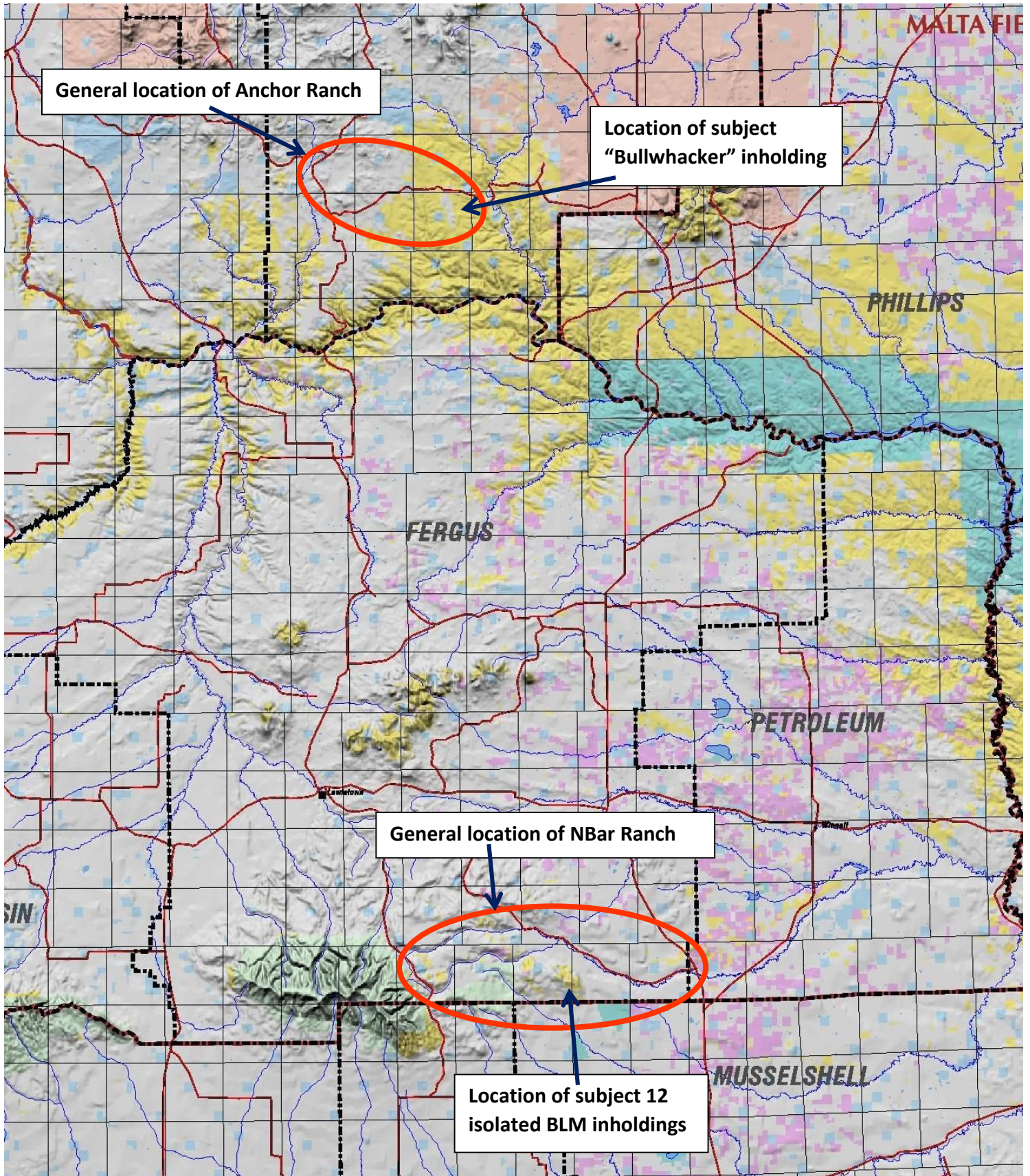
Given the Agency’s charge to protect the “objects” and resources within the Monument, it would be hasty, if not arbitrary and capricious to neglect the full consideration of a land exchange that would provide greater opportunity to protect, restore and enhance the environment rather than constructing a new roadway within the boundaries of such an important national resource.

## **2.0 BACKGROUND**

For several years, the BLM State Director has identified improved public access as one of her top 10 priorities, and has specifically listed re-opening public access to the Missouri River Breaks National Monument as a high priority objective.

A dispute over ownership of an approximate four-mile stretch of Bullwhacker Road in southern Blaine County erupted in 2007 when the County claimed ownership of the road crossing the Anchor Ranch, a private inholding within the Breaks Monument. The Robinson’s, owners of the ranch since 1955, argued that the road was private, established by the fact that the ranch had consistently and routinely controlled access and specifically

**Figure 1-1**  
**Subject Parcel Locations**



evidenced their historic use of a sign-in box for hunting access. Blaine County (backed by Public Lands/Waters Access) and the Robinsons went to District Court in 2009, and in 2011, the Court ruled that the road was indeed private.

In the fall of 2011, the Robinson's developed a formal agreement with Montana Fish, Wildlife & Parks (MFWP) to allow restricted hunting access from early September through late November for holders of special elk and bighorn sheep permits valid in Hunting District 680 for that year.

Around this same time in 2011, the Wilks' were acquiring ranching properties in Central Montana, most notably the NBar, near Grass Range. When assessing the location and potential operational impact of checker-board inholdings in their ranches, the Wilks' began inquiring about how to purchase public in-holdings under FLPMA (43 U.S.C. 1713 (a)). Representatives from the BLM indicated that the agency seldom sells land outright, but does on occasion engage in land exchanges that meet certain objectives. The Wilks' made further inquiries about the land exchange process and asked BLM to identify potential properties that may be of interest. BLM noted the legal dispute and the loss of access to the Upper Missouri River Breaks National Monument and suggested that the Anchor Ranch might be an ideal candidate for exchange if it ever came available. The Wilks' engaged in discussions with the Robinson's to purchase the Anchor Ranch, and secured that property in 2012 with the intent of including significant portions of the ranch in an exchange with the BLM.

Throughout 2012 and 2013, the Wilks' conducted informal conversations with representatives from the BLM in an attempt to understand the mechanics of a land exchange, and what might be an attractive starting point for a formal discussion. In March 2014, the Wilks' submitted a draft land exchange proposal to the BLM for consideration. BLM acknowledged receipt of the proposal and provided public notification that they would initiate the review process and hold public scoping meetings to analyze the proposed exchange and take public comment.

By the early summer of 2014, the BLM had experienced vocal but localized opposition to the exchange and indefinitely postponed any public scoping meetings on the exchange proposal. BLM then terminated consideration of the exchange in a letter to the Wilks' dated August 14, 2014. The letter stated that the BLM did not believe it would be able to "make the requisite positive public interest determination needed to complete an exchange. At this time we do not see any benefit in continuing to pursue a possible exchange."

After terminating consideration of the exchange, BLM announced it would pursue development of a new roadway to access the Breaks Monument, and held public scoping meetings in Great Falls, Chinook, Lewistown and Billings. These meetings took place in late 2014 and early 2015. The tone and course of the conversation at each of these public meetings was quite similar. BLM explained the challenges of building a new road in difficult terrain, in poor soils, in a National Monument, and without a clear source of funding. Over the course of several hours of discussion at each meeting, public participants



asked why BLM was not pursuing the land exchange and suggested reopening discussions with the Wilks'.

In the meantime, the Wilks' continued conversations with individuals and interest groups who saw significant public benefit from the exchange. The Wilks' have hosted two roundtable meetings with individuals and representatives from a broad array of landowner, sportsmen, conservation and recreation interests to discuss concerns with the exchange, to offer suggestions, and to assist in the development of a strategic management plan for the elk in the Snowy Mountains. Participants in these roundtable meetings have included members of the following organizations:

- Rocky Mountain Elk Foundation
- Montana Wildlife Federation
- Montana Stockgrowers Association
- Montana Farm Bureau
- Montana Farmers Union
- Friends of the Missouri River Breaks
- Montana Wilderness Association
- Montana Audubon Society
- United Property Owners of Montana
- Montana Pilot's Association
- Russell Country Sportsmen
- Montana Sportsmen's Alliance
- Recreational Aviation Foundation
- Montana Fish, Wildlife & Parks
- and individual sportsmen from the Havre and Lewistown areas

The majority of the participants see tremendous value in the proposed exchange and are committed to an open dialogue that would ensure not just an equitable exchange of land, but one that also guarantees improved public access to public lands. They also recognize that exclusive aerial access to the federal inholdings on the NBar does not truly constitute "public access," but their enthusiasm is tempered by the fear of ever-diminishing public access for hunting across the state of Montana. While not formally part of the criteria BLM will use in analyzing the exchange, the overall enhancement of hunting opportunities provided by a proposed elk management strategy must be considered as an ancillary benefit in the overall negotiation. An overview of the proposed elk management strategy is presented in Section 6.0 of this document.

The following land exchange proposal represents the product of several years of informal discussion with BLM, neighboring property owners and representatives of the broad array of taxpayers who fund and utilize the vast public lands we all enjoy in Montana.

### **3.0 DETAILS OF 2015 LAND EXCHANGE PROPOSAL**

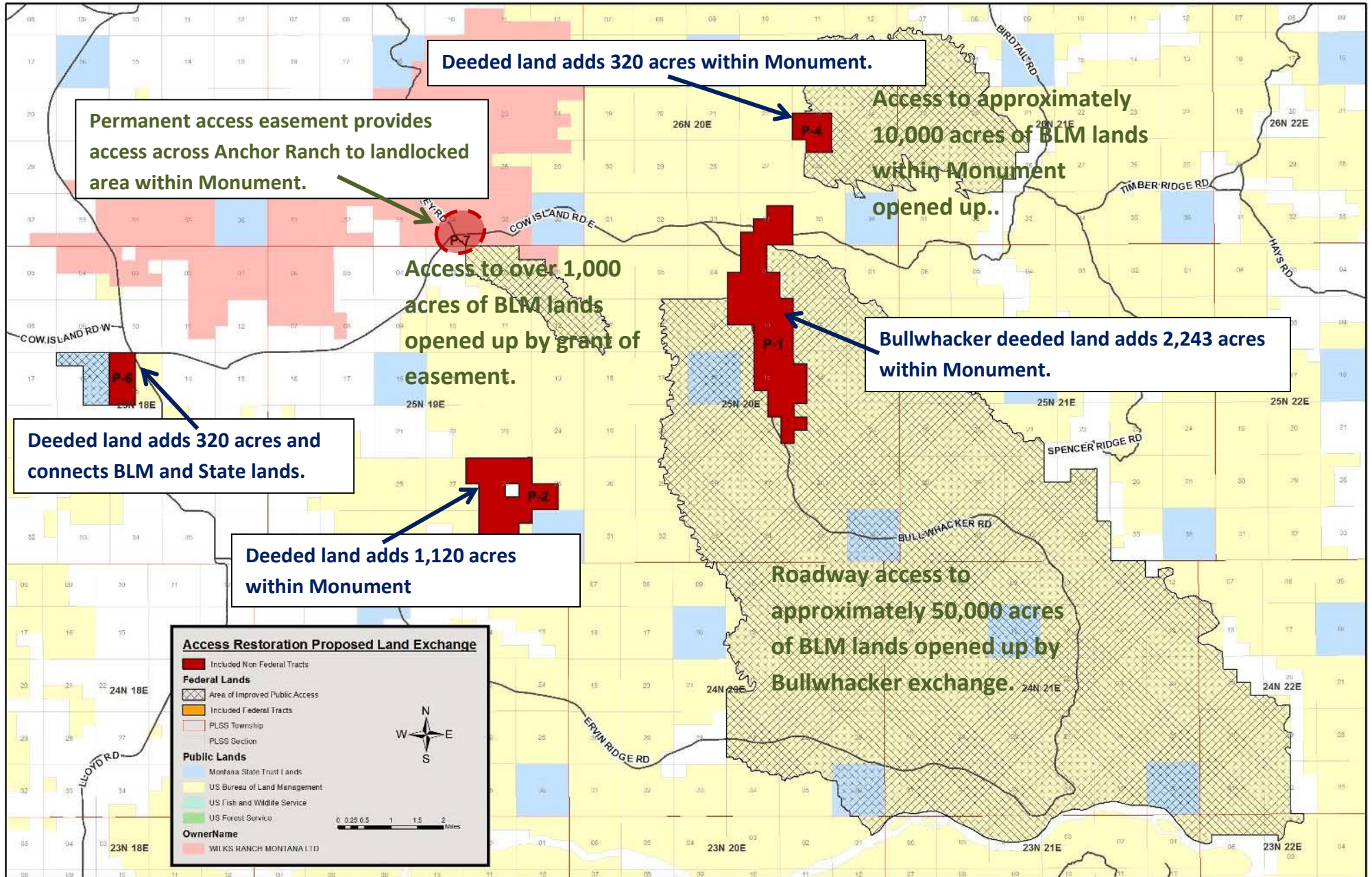
This proposal includes both the exchange of fee lands and grants of access through permanent easements. The acreages contained in this document are intended to be fair and reasonable, but will likely be modified as the process unfolds in order to meet BLM and landowner objectives and to satisfy statutory requirements for an equitable exchange for the taxpayer.

#### **3.1 Fee exchange**

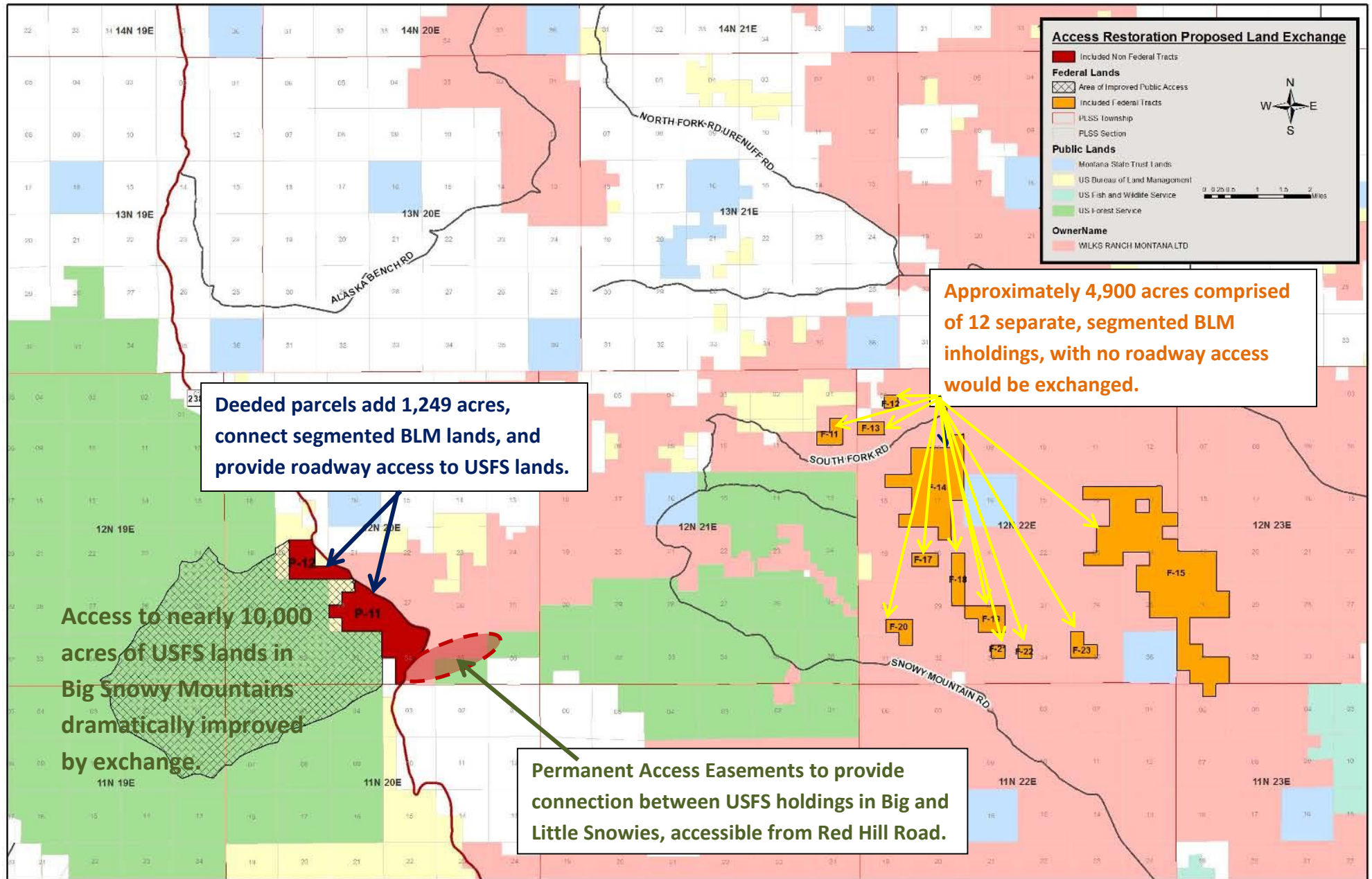
Details on location and specific acreage amounts included in the fee exchange of land are included in Figures 3-1 and 3-2 and Table 3.1. It is important to note that all private parcels included in the exchange proposal are either accessible by roadway or are included to consolidate large holdings for better management of public lands, and none of the 12 segmented federal parcels involved have roadway accessibility. The following provides a general overview of the elements of the exchange:

- A parcel including over 2,200 acres of private inholdings along Bullwhacker Road, in the Upper Missouri River Breaks National Monument, would be transferred to the BLM to provide permanent and indisputable access to over 50,000 acres of land within the Monument that is currently inaccessible by motorized vehicle.
- A parcel including over 1,100 acres of private inholdings within the Monument would be transferred to BLM to block up additional public lands for improved management of the Monument.
- A parcel including over 300 acres of private land immediately adjacent to the Monument would be transferred to BLM to provide better access to over 10,000 acres of public lands inside the Monument and to provide opportunity for better protection of sage grouse habitat in this area of the Monument.
- A parcel including over 300 acres of private inholdings situated between BLM and State lands adjacent to the Monument would be transferred to BLM to provide improved access from Cow Island Road, to provide more contiguous public land, and to provide opportunity for better management of public lands.
- Two parcels including over 1,200 acres of private land on the west side of Red Hill Road, in Fergus County, would be transferred to BLM to provide greatly improved access to over 10,000 acres of USFS properties to the west, and to block up adjacent public lands for better management opportunities. The northerly parcel provides immediate access to a two-track road leading to Old Baldy, which has been identified by Lewis & Clark National Forest personnel as having significant public interest. The southerly parcel vastly improves access to the Big Snowies by eliminating the need to traverse very difficult terrain between BLM access points and significant USFS acreage to the south.

**Figure 3-1**  
**Breaks Monument Parcels**



**Figure 3-2  
Snowy Mountain Parcels**



**Table 3.1  
Parcels Involved in Proposed Land Exchange**

<b>Map ID</b>	<b>Acreage</b>	<b>Characterization</b>	<b>Reason for inclusion</b>
F-11	120	Dry, moderately timbered, steep terrain	Isolated tract with no legal public access
F-12	40	Dry, lightly timbered, flat terrain	Isolated tract with no legal public access
F-13	83	Dry, lightly timbered, sloping terrain	Isolated tract with no legal public access
F-14	1,080	Varies from predominantly steep mountainous terrain with heavy timber to small areas of open grass on butte	Isolated tract accessible only by helicopter
F-15	2,785	Mostly heavily timbered, open grassland in northern portion, transitioning to steep to mountainous terrain	Isolated tract accessible only by helicopter or fixed wing aircraft
F-17	80	Mostly heavily timbered on rolling to steep terrain	Isolated tract with no legal public access
F-18	160	Heavy timber on steep terrain	Isolated tract with no legal public access
F-19	200	Heavy timber on steep terrain	Isolated tract with no legal public access
F-20	120	Isolated stands of timber, mostly grassland on sloping terrain	Isolated tract with no legal public access
F-21	40	Heavy timber on steep terrain, opening to a steep ravine on south end	Isolated tract with no legal public access
F-22	40	Heavy timber in steep to mountainous terrain	Isolated tract with no legal public access
F-23	120	Moderate timber on steep to mountainous terrain	Isolated tract with no legal public access
<b>Total Federal Acreage Involved = 4,868 acres</b>			
P-1	2,243	Grassland, sagebrush, light timber, containing several reservoirs and an established roadway	Provides restored vehicular access to over 50,000 acres within the Breaks Monument
P-2	1,120	Varies between timbered drainages in broken terrain and open grasslands, also contains established roadway	Removes isolated private inholding and blocks up significant acreage within the Monument
P-4	320	Varies between light timber, grassland, sagebrush, steep terrain with good sage grouse habitat	Improves access to over 10,000 acres of Monument lands for improved sage grouse habitat management or recreation
P-6	320	Light timber at south end transitioning to grassland and sagebrush in sloping drainage at the north	Connects BLM and State parcels to provide larger block of public land with roadway access
P-11	911	Portions off Red Hill Road include intermittent streams along flat, open grassland which transition quickly to steep, heavily timbered and mountainous terrain	Provides over three miles of roadway frontage on Red Hill Road to connect to BLM and USFS properties
P-12	338	Includes intermittent streams and drainages in heavily timbered and mountainous terrain	Provides legal access to a two-track roadway accessing Old Baldy, and nearly a mile of roadway frontage on Red Hill Road to connect BLM and USFS properties
<b>Total Private Acreage Involved = 5,252 acres</b>			

(August 24, 2015)

- Twelve isolated federal inholdings totaling approximately 4,900 acres within the NBar would be transferred from the BLM to the NBar to consolidate private land and reduce agency management costs.

### **3.2 Access Improvements**

Beyond the fee exchange outlined above, two permanent access easements would also be included in the exchange. These include:

- A permanent access easement would be provided from Cow Island Road, across private land associated with the Anchor Ranch, to access approximately 1,000 acres of land within the Monument for multi-use recreational and/or improved management purposes.
- A permanent access easement would be provided off the east side of Red Hill Road, across private land associated with the NBar, to provide improved access to several thousand acres of USFS property for multi-use recreational purposes.

### **3.3 Additional Considerations**

Based on the feedback received from Roundtable participants, other interest groups, and state and federal resource management agencies, the Wilks' are willing to consider the inclusion of additional elements in the exchange. The following elements could be added if they are proven to add necessary value to the exchange, if they support the goal of improving multi-use recreational access, and if they do not impose undue burden on adjacent public and private landowners.

- There has been a general request that the Wilks' consider including additional private acreage in and around the Little Snowy Mountains.
- Additional access easements have been requested to improve public access as well as state and federal land management efficiency around the Lewis & Clark National Forest.
- Local area pilots have requested consideration of a new air strip in the vicinity of the Little Snowies to compensate for the loss of aerial access on the federal parcels inside the NBar.
- Sportsmen groups have requested consideration of a "guarantee" of long-term access to the NBar in the form of long-term enrollment in Block Management or conservation easements.

Depending on the land valuation comparison of the parcels included in the current proposal, additional parcels, access and amenities such as those outlined above may be examined as the analysis process proceeds.

## **4.0 EVALUATION PROCESS**

Existing federal code outlines specific criteria to govern the consideration of BLM land exchanges, and the BLM has adopted additional guidelines to provide certainty and predictability in how land exchange proposals will be processed. The following sections provide an overview of those guidelines, followed by recommendations for further articulation of expectations to meet both public land and private property interests in this exchange.

### **4.1 BLM Land Exchange Process**

BLM has internal guidelines associated with the processing of a land exchange consisting of five phases, as follows:

#### **Phase 1 – Development of a land exchange proposal**

The BLM and potential exchange parties meet to discuss land exchange processing requirements and capabilities, the potential lands to be included, and potential benefits and issues, as well as to informally share ideas about proposed land exchanges. This informal discussion and initial screening helps identify proposals that have fatal flaws, or those that would be otherwise unworkable.

#### **Phase 2 – Feasibility evaluation**

In consultation with the non-Federal party, the BLM prepares a report assessing the feasibility of the land exchange proposal, estimates processing costs, and completes required State Office and Washington Office reviews. At the end of this period, if the parties agree to proceed with the exchange proposal, a nonbinding agreement to initiate a land exchange (ATI) is signed by the parties. The ATI outlines the property and interests to be transferred, assigns responsibility for various actions and costs, and sets a schedule for completing various actions.

#### **Phase 3 – Processing and documentation**

This phase begins with public notification of the proposed exchange and an invitation to interested parties and the public to submit written comments or concerns regarding the proposed exchange. During this phase, resource analysis occurs, title is reviewed, appraisals prepared and reviewed, and environmental issues identified and resolved. At the end of this period, the parties may reach an agreement on value.

#### **Phase 4 – Decision analysis and approval**

This phase involves the public interest determination, development of the exchange decision documents, completion of State Office and Washington Office reviews, decision signing, and public notification of the decision on the exchange.

### **Phase 5 – Title transfer**

Includes finalization of the exchange including receiving and reviewing the title evidence and land status, issuing the Federal patent and the non-Federal deed, and closing the transaction.

BLM estimates 18 months to five years to complete the above process, depending on the complexity of the exchange.

## **4.2 Opportunities and Constraints**

Ensuring fairness, transparency and objectivity is essential to the success of any public decision-making process. BLM has established processes in place to aid in the development, analysis, and approval/denial of a land exchange proposal.

The Wilks' proposed land exchange is predicated on establishing and following mutually agreeable rules of engagement, including setting reasonable timelines to reach specific milestones, formally adopting criteria for analysis for this specific exchange, articulating how and when public input will be solicited and how it will be weighed in the process, and maintaining an open and honest dialogue throughout.

The Wilks' understand that executing an exchange will take time and effort on both sides and remain interested in formulating a deal that provides benefit for NBar and Anchor ranching operations and for the broader public's use and enjoyment of public lands. In today's contentious political and overly litigious environment, the Wilks' acknowledge the pressure federal agencies are under when making decisions in the public realm. For that reason, the Wilks' implore the BLM to follow a rigorous and objective evaluation process, to fully consider the merits of the exchange based on BLM guidelines and federal code governing such transactions, and to solicit and consider, as appropriate, public comment on the proposal. Criticism of the process and the outcome is guaranteed no matter what, but fear of that criticism should not deter BLM from exploring a deal that could hold such tremendous value to the public.

Variance from established procedures opens both sides to criticism and lawsuit and should be avoided. Both parties have an opportunity to secure important interests through the exchange, and are constrained only by the will (or lack thereof) to pursue them.

## **5.0 DETERMINATION OF PUBLIC INTEREST**

BLM made reference to a "determination of public interest" in their letter of August 14, 2014. According to BLM guidelines on land exchanges, this determination is supposed to occur in Stage 4; however, it bears discussion at this point since BLM has already issued a statement regarding their assessment of public interest. It is important to understand that this is statutory language with specific legal meaning. The Federal Code dealing with land exchanges (see 43 CFR 2200.0-6) provides explicit criteria to assess the public interest.



Following is an overview of the statutory language and an initial assessment of how this proposal satisfies these criteria.

## 5.1 Overview of the Statute

### Determination of public interest

The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to:

- Achieve better management of Federal lands,
- To meet the needs of State and local residents and their economies, and
- To secure important objectives, including but not limited to:
  - Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values;
  - Enhancement of recreation opportunities and public access;
  - Consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development;
  - Consolidation of split estates;
  - Expansion of communities;
  - Accommodation of land use authorizations;
  - Promotion of multiple-use values; and
  - Fulfillment of public needs.

In making this determination, the authorized officer must find that:

- (1) The resource values and the public objectives that the Federal lands or interest to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and
- (2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands.

Such finding and the supporting rationale shall be made part of the administrative record.

## 5.2 Preliminary Assessment

Even a cursory review of the criteria BLM is to use in making a determination of public interest suggests that the proposed exchange has significant merit, but with an objective review of the facts, Wilks believe the BLM can and should arrive at a positive determination of public interest on this land exchange proposal based on the affirmative responses to the following statutory tests:

**a) Does the proposed exchange provide opportunity to **achieve better management of Federal lands?****

The exchange provides greatly enhanced opportunity for better management of Federal lands by:

- securing large private inholdings within a National Monument,
- granting permanent and indisputable roadway access to the Monument,
- protecting objects of the Monument by eliminating the need for construction of a new, duplicative and potentially destructive roadway within the Monument,
- providing opportunity to protect, restore and enhance lands that have been inaccessible or in private ownership within the Monument, and
- eliminating isolated and inaccessible parcels from the agency's land management responsibility.

With regard to the final point above, it has been federal policy to expedite these types of land exchanges where mutual objectives can be met. During passage of the Federal Land Exchange Facilitation Act of 1988, Congress found and declared that:

*Land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State, and private holdings of land or interests in land for purposes of more efficient management . . . Needs for land ownership adjustments and consolidation consistently outpace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and private landowners; . . . Existing laws are in need of certain revisions to streamline and facilitate land exchange procedures and expedite exchanges. (Pub. L. 100-409)*

Federal policy and historic land exchange practice suggests that this proposed exchange provides a rational and reasonable vehicle to achieve common objectives, particularly given the involvement of "scattered and isolated tracts that are difficult or uneconomical for BLM to manage."

**b) Does the proposed exchange provide opportunity to **meet the needs of State and local residents and their economies?****

Specific "needs" of state and local residents affected by this land exchange may be most thoroughly articulated through the stated objectives of area resource management agencies and interest groups. Two specific objectives are consistently expressed by a range of interests across Montana:

- Improving public access, and
- Capturing the economic value of our recreational resources.

Both of these objectives are discussed in detail below.

Improved Public Access

Montana Fish, Wildlife & Parks (MFWP), sportsmen, wildlife and conservation groups have all noted the importance of improving public access to provide better wildlife management opportunities. A recent and relevant case regarding the importance of improved public access was made when the Rocky Mountain Elk Foundation (RMEF) and MFWP partnered in the acquisition of a private parcel in the Big Snowies, in 2013. This 40-acre acquisition has been lauded for its ability to improve access to about 18,000 acres of USFS land located immediately west of Red Hill Road, in Fergus County. This site is several miles north of the proposed exchange parcels which would provide improved access to additional acreage non-contiguous to the RMEF-accessible acreage. (See Figure 5-1) News reports at the time of the RMEF purchase included the following assessments of the acquisition:

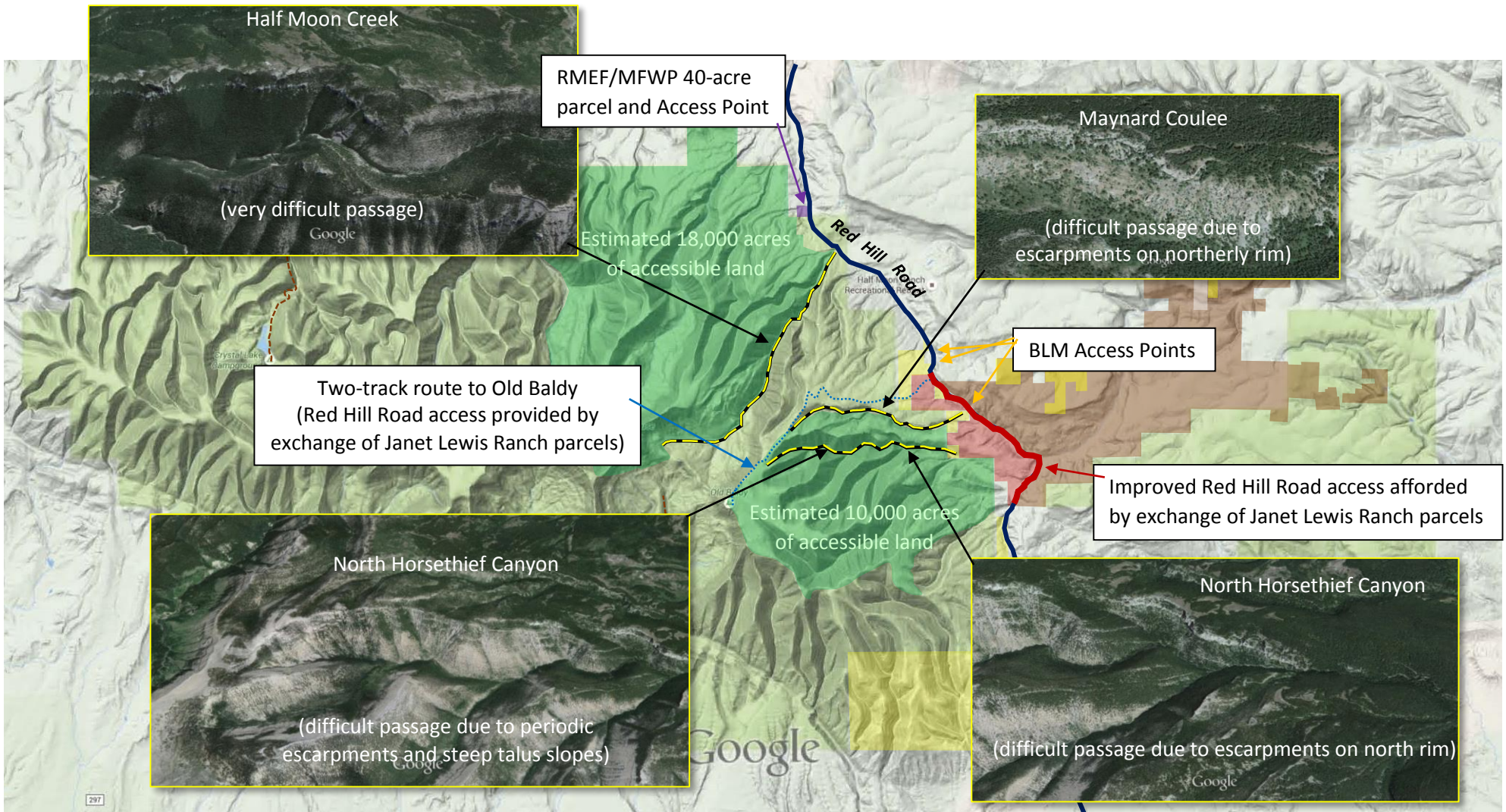
*This small but critical piece of land offers both big game habitat and exceptional access to public land that supports a prized elk population," said Gary Bertellotti, FWP Region 4 supervisor. . . . "This is a big win for hunters and other members of the public because there was realistically no easy way to reach this part of the Snowys. This public access will allow hunters to play a more active part with management of an elk herd that is over objective." added [David] Allen, [RMEF, President and CEO]. "It's a true payback to our members who put so much time and effort into the organization and it lets them have access to some of the most incredible country in central Montana." (RMEF blog, October 23, 2013)*

*"The Rocky Mountain Elk Foundation's Red Hill acquisition is in an area renowned for huge bulls, large herds, and unfortunately, extremely difficult public access," says [Randy] Newberg. "It is some of the finest elk hunting in America. All hunters benefit from acquisitions such as this; just one of many RMEF has completed while quietly going about its business of protecting key elk habitat and improving public hunting access." . . . The Big Snowies have developed a dubious reputation as a place where hunters who can afford to hire a helicopter to fly into landlocked public land can have epic elk hunting. But who among us has the money or the will to airlift themselves into a trophy bull? Here's where the RMEF really works for rank-and-file hunters. By working together with Montana FWP, the Forest Service, and local landowners, RMEF negotiated a way around this longstanding impediment. (Outdoor Life, September 17, 2013)*

*The other nearest public access in the area is the trail up Half Moon Creek, about 1 mile farther south. But as FWP noted in its environmental assessment, Half Moon's steep canyon makes access between the two areas difficult. (Missoulia, October 19, 2013)*

This 40-acre acquisition provides just a 30-foot gateway to the USFS property, but is lauded as providing outstanding habitat and access to some of the best elk hunting in the state, if not the nation. It follows then, that the Red Hill Road parcels included in this proposal (which include several miles of roadway frontage and provide

**Figure 5-1**  
**Public Access Improvements in Big Snowy Mountains**



improved access to a comparable area south of the above-noted canyon at Half Moon Creek) would provide a similar level of extraordinary benefits to state and local residents, as well as out-of-state visitors interested in easier, multi-use recreational access to public lands touted as “some of the most incredible country in Central Montana.”

Montana tourism promotion materials also tout the importance of the Upper Missouri River Breaks, much of which is currently inaccessible by motorized vehicle. Following is an assessment of the recreational importance of this landscape to the public.

*The Upper Missouri River Breaks National Monument became a part of the National Landscape and Conservation System in January 2001. This monument consists of 375,000 acres of public land in central Montana and straddles the Missouri River from Fort Benton to the Robinson Bridge on US Highway 191. It will be managed for current and future users and for visitors from all over the world. The area is considered a destination attraction for Montana’s tourism and travel program.*

*The landscape throughout this monument contains a spectacular array of biological, scientific, historic, wildlife, ecological, and cultural resources mixed with a remote location that offers opportunities for solitude not commonly found today. This remote location retains unspoiled, natural settings that form a backdrop for outstanding recreational and cultural tourism opportunities.*

*The Bullwacker area of the monument contains some of the wildest country on all the Great Plains, as well as important wildlife habitat. During the stress-inducing winter months, mule deer and elk move up to the area from the river, and antelope and sage grouse move down to the area from the benchlands. The heads of the coulees and breaks also contain archeological and historical sites, from teepee rings and remnants of historic trails to abandoned homesteads and lookout sites used by Meriwether Lewis. (www.visitmt.com, Russell Country)*

Of the Breaks Monument, the Montana Wildlife Federation further states that,

*Hunting is specifically noted as a guaranteed historic activity by the Monument Proclamation. The entire Upper Missouri Breaks area is world famous for its big game herds; the elk, sheep, and deer herds there are consequently highly valued by hunters. A reputable elk harvest occurs within the Monument area almost matching its famous neighbor in regards to hunter success, the adjacent Charles M. Russell National Wildlife Refuge. An anomaly associated with elk hunting in the Breaks is that archery hunting eclipses rifle hunting in hunter participation numbers. The UMRBNM is outstanding mule deer habitat with a high hunter success rating, but the shining star of big game clearly is the burgeoning Bighorn sheep herd. Common to the Ervin Ridge, Dog Creek, Bullwhacker Coulee and significant other habitat on the monument, biologists consistently observe 600*

*sheep during annual aerial population surveys. Consistently, FWP boasts a 100% hunter success rate on sheep every year.*

*Interest in bird hunting has increased incrementally in Montana in recent years. The monument is highly suited habitat for sharp-tailed grouse and gray partridge. The islands and riparian areas plus the interface with agricultural crops produce good numbers of ring-necked pheasant. Historic evidence of Sage Grouse breeding areas called 'leks' suggests that it has a high potential for a huntable population. The river's bounty of ducks and geese doesn't go unnoticed by hunters. (www.montanawildlife.com/projectsissues/uppermissouri)*

The importance of public access to both the Breaks and public lands within the Snowies is well-documented. When simply comparing the recreational value of the isolated federal inholdings and the roadway-accessible private parcels in the exchange, the proposal appears to provide a net benefit to the public. The multi-use recreational benefit of restoring vehicular access to the Breaks and improving access to the Snowies far outweighs the loss of limited, trophy elk hunting on the public inholdings. New visitor numbers to the Snowies alone could greatly exceed the limited number currently accessing the federal inholdings. When viewed more comprehensively, the exchange meets the needs of State and local residents by providing greatly enhanced access to a National Monument that was established for the use and enjoyment of all citizens, and by providing multi-modal access to large tracts of public land within the Big and Little Snowies that are very difficult for the average recreationalist to access today.

### *Capturing Economic Value*

The Governor's office, Montana Department of Commerce, local area Chambers of Commerce, and local hoteliers, retailers and eateries have emphasized the state and local importance of providing access to and promotion of a variety of outdoor recreational opportunities for Montana visitors and residents alike.

The Montana Wildlife Federation states that,

*Economic and cultural benefits derived from hunting and other outdoor recreation activities in Montana is substantial. Recreation activities, including hunting, fishing and floating, have surpassed agriculture in economic importance to the state, according to a 2003 news release from the MT Department of Commerce. (www.montanawildlife.com/projectsissues/uppermissouri)*

With their existing use, the BLM parcels involved in the exchange currently produce revenue through grazing leases issued to the NBar. It would be unreasonable to assume other parties would pursue other leases on these parcels due to their remote and inaccessible location. Private parcels to be deeded to BLM in the exchange have the potential to be leased and generate similar revenue. The exchange, however, provides much greater economic growth potential by increasing

the opportunity for multi-use recreational activity in both the Breaks and the Snowies. Any incremental loss of tax revenue from the exchange of private parcels in Blaine County could be offset by increased tourism, Payments In Lieu of Taxes (PILT) or other financial arrangements.

A Brett French article in the Billings Gazette from October 2014 cited an Institute for Tourism and Recreation Research study estimating that “deer and elk hunters spend over \$200 million each year in Montana on everything from ammunition to candy bars. Add in other hunters — from archers to those pursuing antelope — and the figure rises to an estimated \$288 million. That seems like a drop in the bucket compared to the estimated \$3.47 billion that nonresident visitors to Montana spent in 2013.”

Based on assessments from state and local entities, the recreational resources in both the Breaks and the Snowies play a significant role in attracting tourism dollars in the region. Thus, if the Monument is projected to play an important role in the state and local economies, then its role is only enhanced by the greater access afforded by this exchange. Similarly, if the extraordinarily limited trophy elk hunting that occurs on isolated federal inholdings on the NBar plays a role in the state and local economies, then opening/improving access to a greater amount of roadway-accessible land to hundreds – if not thousands – of hunters and other recreational users will only enhance the role of public land in the state and local economies.

In sum, the exchange satisfies numerous state and local public access needs and economic goals in both the Snowies and the Breaks by providing new or improved access for multi-use recreational purposes and attending economic development opportunities. The recreational and economic benefits of the exchange extend far beyond those represented by the limited number of trophy elk hunters who currently access the federal inholdings by air.

- c) Does the proposed exchange provide opportunity to **secure important objectives, including, but not limited to:**
- Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values?
    - ✓ Yes, by providing BLM with exclusive control of access to the Monument and management of the resources previously only accessible by permission of a private landowner. Opting for a land exchange rather than building a new roadway affords much greater opportunity to protect, restore and enhance statutorily-protected objects and resources within the Monument.
  - Enhancement of recreational opportunities and public access?
    - ✓ Yes, by providing vastly improved, multi-use access to over 50,000 acres within the Monument. Land and easements off Red Hill Road also

provide a broad range of recreationalists with greatly enhanced access to USFS and BLM lands. The extensive access improvements in the Monument and Red Hill Road areas dramatically outweigh the loss of limited, aerial access almost exclusively utilized for trophy elk hunting purposes on isolated tracts in the Snowies. In addition, the Wilks' have engaged in conversation with Montana Fish, Wildlife & Parks (MFWP) to establish an elk management strategy for the NBar which would provide a unique and high quality hunting experience for hundreds more than have that opportunity today. Preliminary details on the management strategy are provided in Section 6.0 of this document.

- Consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development?
  - ✓ Yes, the exchange consolidates lands that provide more logical and efficient management and development by consolidating BLM ownership and control of lands within a National Monument, and by eliminating isolated inholdings which are currently of limited and narrow value to the general public and extraordinarily inefficient for BLM to manage due to lack of connectivity and lack of roadway access.
- Consolidation of split estates?
  - ✓ Yes. According to BLM's Land Exchange Handbook, "The disposal and acquisition of mineral estate in exchanges should serve to maintain and improve consolidated ownership of the surface and the mineral estate of Federal land. . . . Proposals that would either create split estate, including reservation of minerals in the Federal land proposed for disposal, or fail to take advantage of consolidation opportunities should be discouraged." Therefore, this proposal includes the transfer of sub-surface mineral rights on all parcels involved in the exchange to avoid creation of any split estates. It must be noted, however, that Wilks do not own the subsurface rights on the Anchor Ranch. There are operating gas wells adjacent to Bullwhacker Road that may remain in the ownership of the Robinson family.
- Expansion of communities?
  - X No. The intent of the exchange is to consolidate federal ownership within the Upper Missouri River Breaks National Monument, and private ownership within the NBar Ranch to improve respective public and private operation and management of existing resources. No additional development is currently envisioned for any of the parcels involved in the exchange.
- Accommodation of land use authorizations?
  - X No. Land use authorizations within the Monument are governed by the Proclamation and the subsequent Resource Management Plan(s) and would be unaffected by this exchange. Wilks' currently hold leases on the



BLM inholdings within the NBar, and no other land use authorizations on those parcels are reasonable or feasible due to the lack of roadway access.

○ Promotion of multiple-use values?

- ✓ Yes, the exchange explicitly promotes multiple use values in the Monument by providing a primary access route for all types of motorized vehicle, foot and/or horseback travel, it provides greatly improved access to well over 10,000 acres of USFS lands on both the east and west sides of Red Hill Road for multi-use recreational purposes, and eliminates only isolated parcels that are used almost singularly for trophy elk hunting purposes.

Much of the Monument is currently inaccessible for general recreational use, and is subsequently used predominantly by walk-in hunters or private aviators gaining access via approved air strips. Greatly improved access for individuals of broad age and physical ability would be provided via Bullwhacker Road and would promote additional uses such as day hikes, picnicking, camping, historic and cultural interpretation, geological interpretation, botany, bird watching and hunting. Likewise, the exchange of parcels adjacent to, and grant of easement through portions of the NBar promote multiple-use values on neighboring BLM, USFS and state lands that are currently inaccessible by roadway. Small areas previously accessed almost exclusively for hunting purposes would be replaced with access to thousands of acres of public land for a variety of uses by hundreds of recreationists of all walks and interests.

○ Fulfillment of public needs?

- ✓ Yes, the exchange fulfills public needs as outlined in the Monument RMP to “protect the objects” identified in the original Proclamation, by eliminating the need to construct a new roadway that crosses dozens of drainages that feed into the Cow Creek Area of Critical Concern as well as potential disruption to sensitive habitat, historic and archeological resources, and visual resources. Any perceived loss of hunting access for the estimated 30 to 60 hunters who are privileged enough to access the small inholdings by air is far outweighed by the access afforded to them and the hundreds more that would gain roadway access to thousands of acres of USFS and BLM lands off Red Hill Road.

In sum, the proposed land exchange is in complete accord with the criteria the BLM must use in making a final determination, namely:

- ✓ The resource values and the public objectives that the Federal lands inside the N-Bar ranch currently and could ever serve in Federal ownership are greatly exceeded by the resource values of the non-Federal lands and the public objectives served by the lands adjacent to Red Hill Road and in and around the Upper Missouri River Breaks National Monument; and

- ✓ There are no adjacent Federal lands or Indian trust lands adjacent to or in immediate proximity of the isolated Federal inholdings that would be conveyed by the BLM in this exchange, thus no conflict with established management objectives in either the N-Bar area or the Monument.

In an effort to achieve the nation's goals in the Monument and to protect the objects of the Monument, the people of Montana and the nation deserve full examination of the proposed land exchange in an open and objective public process.

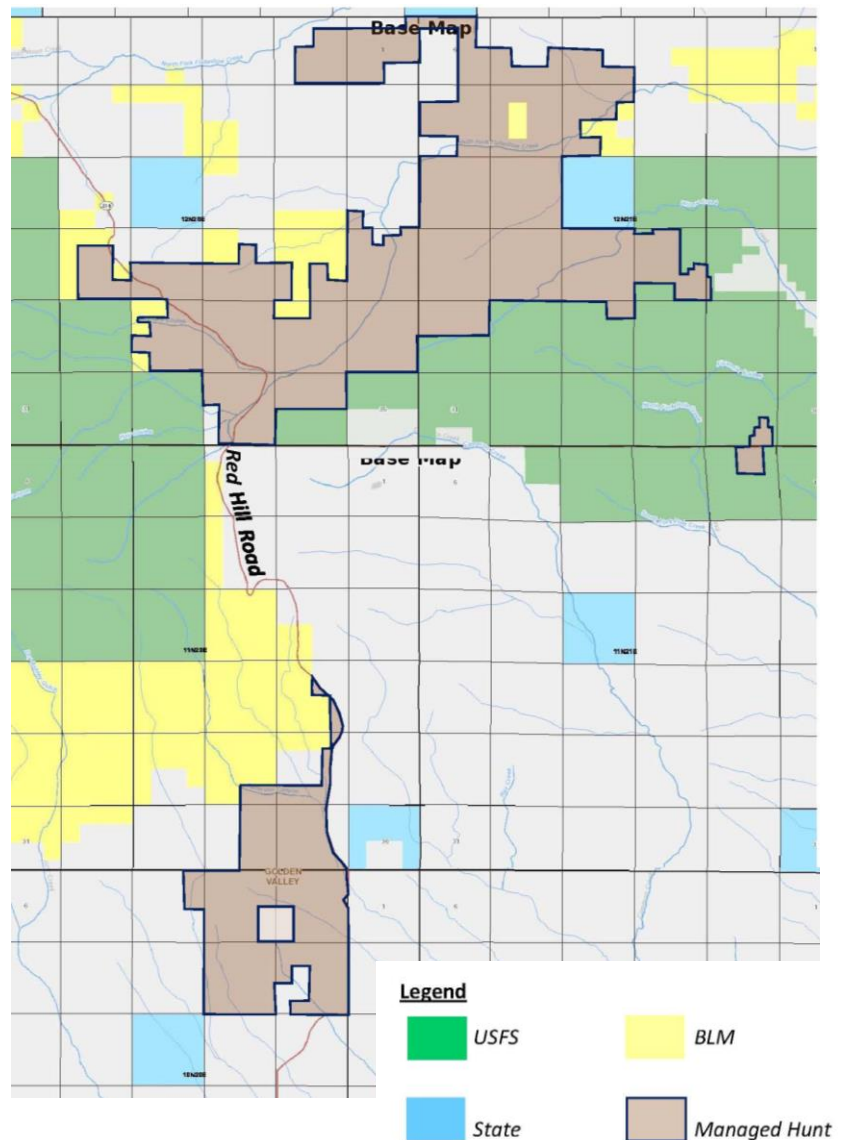
## 6.0 ELK MANAGEMENT STRATEGY

Both the Monument and the Snowies play host to some of the best elk hunting in the state.

Wilks understand the concern expressed by MFWP staff about losing even limited access to the herds in the Big and Little Snowies, currently represented by the BLM inholdings. Legally-accessible acreage within the NBar amounts to approximately 3,870 acres of BLM land and 1,280 acres of adjoining state land.

Through this exchange, Wilks propose to open over 14,000 acres of private land within the NBar to managed public hunting, which would in turn provide access to an additional 1,920 acres of currently inaccessible public land not involved in the exchange. In combination with the exchange (including the 10,000 acres of improved access west of Red Hill Road), this would provide greatly-enhanced hunter access to well over 26,000 acres of public and private land, which amounts to more than five (5) times the amount currently accessible only by aircraft – just in Fergus County.

**Figure 6-1  
Proposed Elk Management Areas**



The elk management strategy will be focused on maintaining and improving the overall health of the herd, providing a high-quality hunt for far more Montanans than currently have access, and recognizing the value of the investment the Wilks have put into the N-Bar ranch. The specific details of the strategy will be developed in collaboration with MFWP, but would provide for public hunting during specific times of archery and rifle seasons, as well as shoulder-season cow hunts. The NBar will also continue to host Lewistown-area youth, Wounded Warriors and other special hunts as permitted by MFWP.

## **7.0 ONGOING NEPA PROCESS**

Upon issuing notice in August 2014 that BLM was no longer considering a land exchange, the agency initiated public scoping for the preparation of an Environmental Assessment (EA) to examine alternatives that would restore motorized access to the Bullwhacker area of the Monument.

Federal Code states that the NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)).

### **7.1 NEPA Compliance Process Overview**

Based on BLM guidance documents, typical analytical steps for an EA are as follows:

- Identify the purpose and need for action and describe the proposed action to the extent known.
- Develop a scoping strategy and conduct scoping.
- Identify issues requiring analysis.
- Refine the proposed action.
- Develop reasonable alternatives to the proposed action.
- Identify, gather and synthesize data.
- Analyze and disclose the impacts of each alternative.
- Identify potential mitigation measures to reduce adverse impacts.

Many of these steps are iterative; for example, developing alternatives may lead to the identification of additional issues requiring analysis. At several points in the process, BLM may loop back to an earlier step to make refinements.

One of the most critical pieces of a NEPA document is the statement of “purpose and need.” The purpose and need statement describes the problem or opportunity to which the BLM is responding and what the BLM hopes to accomplish by the proposed action.

## 7.2 Purpose and Need

BLM guidance suggests that the purpose and need statement be brief, unambiguous, and as specific as possible, though it cannot be arbitrarily narrow.

In this particular case, the BLM has issued a draft purpose and need statement to:

*Restore motorized access to the Bullwhacker area in the Upper Missouri River Breaks National Monument.*

The purpose and need statement dictates the range of alternatives, because action alternatives are not “reasonable” if they do not respond to the purpose and need for the action. The broader the purpose and need statement, the broader the range of alternatives that must be analyzed. The purpose and need statement will provide a framework for issue identification and will form the basis for the eventual rationale for selection of an alternative. Generally, the action alternatives will respond to the problem or opportunity described in the purpose and need statement, providing a basis for eventual selection of an alternative in a decision.

## 7.3 Development of Alternatives

NEPA directs the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. . .” (NEPA Sec. 102(2)(E)).

The range of alternatives explores alternative means of meeting the purpose and need for the action that are also consistent with the basic policy objectives for management of the area. BLM must analyze those alternatives necessary to permit a reasoned choice (40 CFR 1502.14). For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives; however, implementation must not be remote or speculative, and the alternatives must not be substantially similar in design and effects to another alternative that is already being analyzed.

In determining the alternatives to be considered, the emphasis is on what is “reasonable” rather than on whether the BLM likes or is itself capable of implementing an alternative. Reasonable alternatives include those that are *practical or feasible* from the technical and economic standpoint and using common sense, rather than simply *desirable* from the standpoint of the BLM. (Adapted from Question 2a, CEQ, *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981*). BLM can only define whether an alternative is “reasonable” in reference to the purpose and need for the action.

## 7.4 An Alternative for Consideration

To date, BLM is still on record as having rejected a land exchange that would involve the permanent ownership of the Bullwhacker Road, providing access to over 50,000 acres of

land within the Upper Missouri River Breaks National Monument. Instead, the BLM has initiated the review of several new roadway alignments inside the Monument under a formal NEPA process.

In early July 2015, Wilks' circulated a Draft version of this proposal for review by Roundtable participants, their member organizations, and others who had expressed interest in the exchange. As a courtesy, the Draft was also provided to BLM staff in Lewistown for their informal review. Staff provided a brief overview of the Draft proposal to the BLM's Central Montana Resource Advisory Council (RAC) on July 16. At that meeting, RAC members voted unanimously to recommend inclusion of the land exchange in the NEPA analysis of alternatives to restore motorized access to the Breaks Monument.

Wilks' appreciate the thoughtful consideration by the RAC and their recommendation to move forward with analysis. With this document, Wilks' submit that the land exchange is a reasonable alternative to new roadway construction in the Breaks Monument, and must be considered in the ongoing NEPA process. Even cursory analysis confirms the following:

- The land exchange fully **satisfies the Purpose and Need** to "restore motorized access to the Bullwhacker."
- The land exchange is **practical**, in the sense that BLM has established procedures to conduct exchanges and has executed countless land exchanges across the country.
- The land exchange is **feasible** given that there is willing participant in the private landowner.
- From a **technical and economic** standpoint, access to the Bullwhacker area is already provided in the most ideal location – the existing roadway that travels the top of the ridge. Acquiring this land through the exchange avoids damaging new construction and ongoing maintenance in difficult soil conditions either east or west of the existing roadway. Additionally, the BLM has no identified source of funding for the construction and long-term maintenance of a duplicative roadway.
- Regardless of what some may see as desirable, **common sense** dictates that the land exchange be given full consideration as a **reasonable alternative** to new roadway construction in a National Monument.

For these reasons, the Wilks' formally petition the BLM to initiate detailed and objective consideration of the land exchange outlined in this document, as an alternative to new roadway construction in the Upper Missouri River Breaks National Monument.