

# Decision Notice

and

## Finding of No Significant Impact (FONSI)

### Rio Oxbow Land Exchange

Mineral, Hinsdale, and Rio Grande Counties,  
Colorado

USDA Forest Service  
Rio Grande National Forest

January 2004

Lead Agency: USDA Forest Service

Responsible Official: Peter L. Clark, Forest Supervisor  
Rio Grande National Forest  
1803 West Highway 160  
Monte Vista, CO 81144

For Further Information: Pat Prentice, Supervisor's Office  
Rio Grande National Forest  
1803 W. Hwy. 160  
Monte Vista, CO 81144  
(719) 852-5941  
email: pprentice@fs.fed.us

This document is available on the Internet:  
[www.fs.fed.us/r2/riogrande/planning/planning.htm](http://www.fs.fed.us/r2/riogrande/planning/planning.htm)

#### **Abstract**

This document discloses the decision to implement Alternative 1 to allow the land exchange, as proposed, with the necessary modifications to make Federal and non-Federal lands equal in value. The impacts of the selected action are not significant and preparation of an Environmental Impact Statement is not required. The rationale for the decision and findings are described in this document.

# Decision Notice and Finding of No Significant Impact (FONSI)

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# Decision Notice/ Finding of No Significant Impact

## Introduction

This Decision Notice (DN) and Finding of No Significant Impact (FONSI) documents my decision regarding the proposed Rio Oxbow Land Exchange. It contains a brief summary of the environmental analysis completed for this project as well as my decision regarding which alternative to implement and the rationale for my decision. It also contains certain findings required by the applicable laws, and information concerning the right to administrative review of this decision. The Environmental Assessment (EA) completed for this project is incorporated by reference in this decision and is attached.

## Decision

Based upon the EA completed for this project, as well as comments received from scoping and the 30-day public review of the document, it is my decision to implement the exchange as described under the “Proposed Action Alternative” analyzed in the EA, with the following modifications:

- 1) Non-federal parcels B1 and B2 (Bonafacio properties) and the JTC Claim of Carson Mining Claim group, will be deleted from this conveyance. While I have determined that they are suitable for acquisition, these parcels will not be included in this transaction because of excess non-Federal value. Exchanges are required to be of equal value. However, if, prior to closing, additional cash equalization funds become available, my intent is to add either or both of the Bonafacio properties back into this transaction. The JTC claim will be donated to the United States by the non-Federal parties in a separate and independent transaction.
- 2) Federal Parcel N-3 was originally considered at the request of Non-Federal parties, but was dropped, as indicated in the EA, because it would have created a more difficult Federal land boundary to manage, in conflict with Forest Plan guidelines.

The EA and planning record were reviewed in light of the modifications and none of the conclusions are affected.

## Rationale for the Decision

The Environmental Assessment, Proposed Rio Oxbow Land Exchange (EA) for this proposal was prepared in compliance with the National Environmental Policy Act (NEPA). Effects of alternatives considered were determined to be not significant. Since this EA was initiated, new species have been added to the Sensitive Species List. I have determined that this action and assessment are “well underway”, as provided by Forest Service Manual 2600, Chapter 2670, and therefore do not need to include the additional sensitive species. A biological assessment (BA) was prepared in compliance with process requirements under the Endangered Species Act and related Forest Service policy. Other planning record reports include those for heritage resources, wetland and floodplain resources, hazardous substances, and appraisals of the Federal and non-Federal parcels. I referred to and have relied on these reports in my decision documented here. I have also considered the public input provided both during scoping and comments to the EA.

I am convinced that there is a valid purpose for this exchange. It is my intention to acquire the non-Federal lands in the Lost Trail Creek area of Hinsdale County known as Carson Mining Claims, Long Ridge areas of Mineral County, and two of the non-Federal portions of the Nicomodes Gulch and Bonafacio Gulch areas in Rio Grande County for management as part of the Rio Grande National Forest. It is also my intention to convey the National Forest System (NFS) lands sought by the Non-Federal Parties because such conveyances would be consistent with the goals and objectives of the Rio Grande National Forest Revised Land and Resource Management Plan (Forest Plan).

The exchange will be completed under authority of and in accordance with the General Exchange Act of March 20, 1922 (P.L. 67-173), the Federal Land Policy and Management Act of October 21, 1976 (FLPMA, P.L. 94-579) as amended, and the Federal Land Exchange Facilitation Act of August 20, 1988 (P.L. 100-409).

The ten National Forest System (NFS) parcels included in the Proposed Action Alternative as analyzed in the EA total 469.79 acres, more or less. These parcels have a total appraised value of \$1,493,500. The EA addresses eleven non-Federal parcels totaling approximately 1,134.63 acres (see EA for location and description of Federal and non-Federal parcels). However, only non-Federal Parcels B3 and B4 of the Bonafacio/Nicomodes area, the Carson claims, excluding the JTC claim, and Long Ridge will be included in the exchange, with a combined acreage of 814.91 acres and an appraised value of \$1,598,000 (see EA for location of parcels). The Forest Service will provide a cash equalization payment of \$104,500 to arrive at an equal value exchange. However, as described above, if additional cash equalization should become available prior to closing, it is my intent to add in either or both of the remaining Bonafacio/Nicomodes parcels.

The NFS lands and non-Federal parcels to be conveyed under this Decision are described as follows:

**National Forest System Parcels**

<b>TRACT #</b>	<b>ACRES</b>	<b>TOWNSHIP/ RANGE</b>	<b>SECTION #</b>	<b>DESCRIPTION</b>
N1	37.82	T41NR1W	SEC. 3	SW $\frac{1}{4}$ SE $\frac{1}{4}$
N2	80.00	T41NR1W	SEC. 10	W $\frac{1}{2}$ NW $\frac{1}{4}$
N3	Removed			
N4	84.60	T40NR2W	SEC. 25	Lots 1, 2
N5	15.00	T40NR2W	SEC. 36	SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$
N6	12.50	T40NR2W	SEC.35	SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
			SEC. 36	S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$
L1	4.06	T40NR2W	SEC. 14	Lot 5
L2	19.59	T40NR2W	SEC. 11	Lot 9
L3	1.11	T40NR2W	SEC. 10	Lot 6
L4	0.04	T40NR2W	SEC. 4	Lot 3
L5	215.07*	T40NR2W	SEC. 9	Lot 2
			SEC. 14	Lots 4, 7, 9
			SEC. 15	Lots 1, 4, 6 7
			SEC. 23	Lots 1, 2, 6, 7
<b>TOTAL National Forest System Lands = 469.79 ACRES</b>				

\* The acreage variation between the EA and this decision for this parcel are a result of a final BLM survey.

### Non-Federal Parcels

TRACT	ACRES	TOWNSHIP/ RANGE	SECTION #	DESCRIPTION
<b>Long Ridge</b>				
LR1	1.95	T40NR2W	SEC. 4	Portions SW $\frac{1}{4}$ SE $\frac{1}{4}$
LR2	11.44	T40NR2W	SEC. 10	Portions NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$
LR3	15.11	T40NR2W	SEC. 10	Portions N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$
		T40NR2W	SEC. 11	Portions SW $\frac{1}{4}$ SW $\frac{1}{4}$
LR4	30.38	T40NR2W	SEC.14	Portions NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Portions NE $\frac{1}{4}$ NW $\frac{1}{4}$
LR5	32.91	T40NR2W	SEC. 13	Portions SW $\frac{1}{4}$ NW $\frac{1}{4}$
		T40NR2W	SEC. 14	Portions SE $\frac{1}{4}$ NE $\frac{1}{4}$
<b>Total Long Ridge</b>	<b>91.79</b>			
<b>Bonafacio</b>				
B3	153.15	T38NR6E	SEC. 8	W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$
B4	215.81	T38NR6E	SEC. 18	S $\frac{1}{2}$ N $\frac{1}{2}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$
<b>Total Bonafacio</b>	<b>368.96</b>			

<b>Carson</b>			
Hays Pl.	133.87	T42NR5W	Hays Placer, USMS #6778
Continental Divide Claims	220.29	T41NR4W T41NR5W T42NR4W T42NR5W	Continental, USMS #7605 Bay State, USMS #7605 Contact, USMS #7606 Hoosier Girl, USMS #5945 Jumbo, USMS #5945 Stoneblack, USMS #5945 L.R., USMS #6237 Maid of Carson, USMS #7115 High Line, USMS # 8206 Sitting Bull, USMS #8206 Queen Bee, USMS #8206 Hard Cash, USMS #7609 Hattie, USMS #9130 Autumn, USMS #5945 Florida, USMS #6623 Mott F., USMS #10040 Ajax, USMS #7607 Annie, USMS #9130 Cresco, USMS #6892 Red Deer, USMS #8206 Cawnoo, USMS #14695A Seaboard, USMS #14695A Pinnacle, USMS #14695A Pinnacle #2, USMS #14695A
<b>Total Carson</b>	<b>354.16</b>		
<b>TOTAL NON-FEDERAL LANDS = 814.91 ACRES</b>			

There are no water rights on either the NFS or non-Federal parcels, and water rights will not be conveyed in this land exchange.

There are no structures on either NFS or non-Federal parcels, therefore, no structures will be conveyed in this land exchange.

The Federal lands do not contain any old-growth timber.

This exchange will eliminate approximately 11 miles of boundary lines with a one time cost saving of \$55,000.00.

The exchange will result in a net increase of 1.44 miles of roads under Forest Service jurisdiction and maintenance responsibility. The acquisition of those parcels with existing roads will eliminate the need for two rights-of-way, providing roaded access to additional areas of public lands.

In making this decision, I have considered applicable laws, regulations, and policy, and the information disclosed in the EA, the Forest Plan, and the planning record. I considered how the alternatives meet the Purpose of and Need for Action and address the issues. I have considered the mitigation measures and have determined that they will be effective in protecting Forest resources. I also considered public and agency comment.

This decision has been reached for a number of reasons. The exchange provides the Forest Service the opportunity to achieve better management of National Forest System lands within the Rio Grande National Forest and to gain important resources that are currently in private ownership and subject to development.

Benefits of the exchange include simplifying current land boundaries between National Forest and private lands, reducing the risks of future administrative problems arising from differing land management direction on public and adjacent private lands, protecting wildlife resources on the lands that would move into public ownership, as well as those on the adjacent public lands, and resolving potential conflicts regarding access. The Forest Service would receive the following benefits:

- Acquire a net gain in public lands of 345.12 acres.
- Acquire a net 256.14 acres of elk winter range through its acquisition of 368.96 acres of elk winter range on the Bonafacio properties and lose 117.82 acres of winter range in Parcels N1 and N2.
- Acquire a net 25.99 acres of wetland through the acquisition of 40.60 acres of wetland on the Non-Federal lands and the conveyance of 14.61 acres of wetland on the Federal lands.
- Acquire properties traversed by the Continental Divide National Scenic Trail and eliminate right-of-way issues that currently exist.
- Improved efficiencies through reduction of landline responsibilities and improved landownership configuration.

I am aware that this exchange, like most exchanges, cannot be done without giving up National Forest System lands that possess certain resources and which may have value to certain segments of the public. In these instances, my objective has been to mitigate the losses, so that public resources are not seriously diminished. It is also the Forest Service responsibility to view an exchange in light of its affects on the public as a whole.

There would be a net loss of 34.01 acres of floodplain through conveyance of 36.01 acres on the Federal lands and acquisition of 2.0 acres floodplain on the non-Federal lands. No loss of wildlife habitat associated with floodplains would occur, however, because the landowner has agreed to place a conservation easement on the property after conveyance which prevents development. Because no development would be allowed on floodplains given up and the Forest can control development on floodplains acquired, the public is assured of more protection to floodplains through this exchange.

There would also be a net loss of 48 acres of identified suitable lynx habitat through its conveyance of approximately 222 acres of suitable habitat on the Federal lands and the acquisition of 174 acres on the non-Federal lands. Again, a conservation easement would prohibit development or commercial timber harvest in designated lynx habitat on almost all lynx acreage conveyed. By placing an additional 174 acres of lynx habitat into public ownership and by prohibiting development on lynx habitat that is conveyed, the public is assured of more lynx habitat protection through this exchange. I will ensure that this easement is executed at closing.

There would be a loss of the limited public recreational opportunities on approximately 1616 lineal feet of the Rio Grande and associated stream banks through the conveyance of Parcels N2 and L3 and a loss of one potential river access point found at Parcel L3. Although this has been expressed as a substantial loss in some public comments, I am convinced that the public as a whole will receive more recreation opportunities from the exchange than currently exists from these parcels. Parcel N2 has 1266 lineal feet of the Rio Grande running through it, but access to this river segment for the general public is prevented by adjacent private land and by a steep cliff face. The public currently does not have access to the parcel except with the permission of the adjacent landowner. Access apparently is not generally permitted to the general public. The only way the public can access this segment of the Rio Grande is by floating the river. Boaters would lose access to the riverbank in this one place. To mitigate this loss, a river access point at either the Fisherman's Area near the Park Corrals or at the Rio Grande Campground will be improved, at the non-Federal party's expense, to better accommodate river users. I also do not see the loss of the river access point in Parcel L3 to be a major loss to recreational users. The access point is very small and has a steep bank. There is no evidence that it currently gets any significant use due to access to the river being difficult because of the large boulders and rip-rap lining the river's edge. In addition, the Colorado Department of Transportation has informed the Forest Service that they will not allow an improved access to be developed within their right-of-way. In addition to mitigation specified in the EA, recreational opportunities associated with hiking, hunting and wildlife watching gained by acquiring the Bonafacio and Continental Divide parcels would help offset recreational losses.

Overall recreational opportunities are not expected to diminish and therefore there should be no loss to the local economy. There also should be no specific economic loss to any commercial enterprise, because no authorizations have

been issued for commercial activities on the NFS lands included in this exchange.

There would be a loss of public access to recreational trails in Parcel N2. To mitigate this loss, the trail will be relocated at the non-Federal party's expense to allow for continued access to adjacent public lands.

Any development at the top of the cliff face in N2 would have to comply with Mineral County and would have to be addressed by the landowner prior to development, so unstable conditions to the river below are not anticipated. To ensure that the unique geologic formations exposed by the cliff face in N2 are available for future scientific and educational purposes, the non-Federal party will add a deed restriction to the parcel ensuring the availability for such uses upon execution of a liability indemnification.

As part of the initial assessment for this exchange, the proposed action alternative contemplated inclusion of certain parcels that have been dropped. Parcel N3 was considered at the request of the non-Federal party, but was dropped because it went counter to Forest Plan direction to simplify land boundaries. Assessment of the Proposed Action included the removal of Parcel N3.

I am dropping two of the Bonafacio tracts because of excess non-Federal value. The proponents of this land exchange have agreed to provide an option to purchase these two tracts and the Forest Service will seek funding to purchase them in a separate and independent transaction. The proponents have also agreed to donate the JTC Claim in a separate transaction, thus ensuring all the suitable Carson claims are acquired. With these arrangements, the United States will acquire or have the opportunity to acquire all of the acreages that were determined to be suitable for acquisition.

Authorizations currently exist for the highway right-of-way and a water transmission line. The property will be conveyed subject to the highway right-of-way, and the non-Federal party will be required to execute a replacement easement for the transmission line.

## **Purpose and Need**

The purpose of the Rio Oxbow Land Exchange is to enhance the land management activities of the Forest Service and the involved Non-Federal Parties. The Non-Federal Parties include S. Alan Lisenby and Charles Nearburg.

The Forest Service is authorized to complete land exchanges after a determination is made that the exchange will serve the public interest. When considering the public interest, the authorized officer shall give full consideration to: 1) the opportunity to achieve better management of Federal lands; 2) the needs of the state and local residents and their economies; and 3) achieving

important resource management objectives including protection of fish and wildlife habitat, riparian habitat, cultural resources, recreation opportunities and watersheds.

The Non-Federal Parties and the Rio Grande National Forest have cooperatively developed the proposed land exchange to accomplish a number of objectives identified in the Forest Plan and the Standards and Guidelines pertaining to real estate in that plan. With regards to the acquisition of non-Federal lands and conveyance of Federal lands, these objectives include the following:

- Acquisition of important or unique resources (i.e. wetlands, floodplains, wildlife habitat).
- Consolidation of Federal landownership which will enhance Forest management activities and result in a reduction of National Forest boundary line and survey corners requiring periodic maintenance.
- The conveyance or acquisition would reduce Forest Service administrative costs and improve management efficiency.
- The conveyance would reduce conflicts between the Forest Service and private landowner objectives.
- Acquisition would enhance Forest Service purposes, including access.
- Acquisition would improve administration and reduce trespass.
- Acquisition would add significantly to available Forest Service goods and services.
- Conveyance of Federal parcels which have lost or are losing their National Forest character due to proximity to residential development.

## Alternatives

Three action alternatives were developed and analyzed in detail in the EA along with the No Action alternative. The alternatives analyzed in detail in the EA are summarized below:

## Proposed Action

The original exchange proposal, which was a product of four years of collaborative effort between the U.S. Forest Service and the Non-Federal parties, would result in the conveyance of 35 parcels of Non-Federal land totaling approximately 1,134.63 acres in exchange for 10 parcels of Federal land totaling approximately 468.78 acres.

This alternative addresses the issues and opportunities outlined above. These include simplifying current land boundaries between National Forest and private lands, reducing the risks of future administrative problems arising from differing land management direction on public and adjacent private lands, protecting wildlife resources on the lands that would move into public ownership, as well as those on the adjacent public lands, and resolving potential conflicts regarding access.

## **No Action Alternative**

Under the No-Action Alternative, no exchange of lands would occur between the Forest Service and the Non-Federal Parties. The lands would remain with their current owners.

## **Proposed Action Modified by Eliminating Parcel L3 and the Southeast Corner of Parcel N2**

Under this alternative Parcel L3 (1.11 acres) and the extreme southeast corner of Parcel N2 (that portion including the river and lands on the south side of the river, roughly 5 acres) would be eliminated from the proposal. This alternative would address the recreational issues concerning the loss of river and shore access that would occur through the conveyance of these properties from Federal ownership. It would also address floodplains issues as they pertain to these parcels. Modifications under this alternative would reduce the total acreage moving from Federal to private ownership to approximately 462.67 acres.

## **Proposed Action Modified by Eliminating Parcel L3 and the Parcel N2**

Under this alternative Parcels L3 and N2 would not be exchanged. This alternative would address all of the river access concerns regarding the N2 and L3 parcels and would address floodplain issues as they pertain to these two parcels. It would also address wildlife concerns regarding elk migration and winter range in Parcel N2, the potential loss of access to the geologic features present in Parcel N2, the off-river recreational issues concerning the trail system in western portion of that parcel, and issues related to the potential loss of visual quality in Parcel N2. This alternative would reduce the total acreage moving from Federal to private ownership to approximately 387.67 acres.

## **Alternatives Considered but Eliminated from Detailed Analysis**

### **Acquire non-Federal Lands through Direct Purchase**

The Forest Service considered the alternative of acquiring the Non-Federal parcels through a congressional appropriation from the Land and Water Conservation Fund (LWCF). However, this alternative was dropped from further consideration because the proposed appropriation would have competed against other such requests nationwide and, given higher priority requests both within the Region and nationwide, it is unlikely the acquisition would have been appropriated. Therefore, the Forest Service concluded that the land exchange process offered a more viable means of acquiring these properties. Additionally, the owners of the non- owned by the non-Federal Parties Federal parcels have informed the Forest Service that the non-Federal parcels are not available for purchase by the United States. In addition, objectives of improved land ownership patterns that would be achieved through conveyance of the Federal parcels would not be achieved.

### **Acquire Entire Carson Townsite**

The entire group of mining claims comprising the Carson property totaled approximately 600 acres. All of these parcels were included in the original exchange proposal. However, following analyses of these claims, including extensive soil and water sampling, a number of the mining claims were dropped. The presence of hazardous substances, associated with historic mining operations, and potential future liability made them unsuitable for acquisition by the United States

## **Scoping and Public Involvement**

The public was initially informed of the proposed exchange through legal notices published in local newspapers. These public notices invited interested parties to submit comments to the Rio Grande National Forest for a period of 45 days. Notification of the proposed land exchange was sent to interested parties, including state and local agencies and elected officials. The Publication Notices were published in the following newspapers on the dates indicated:

Monte Vista Journal-April 25, May 2, 9 and 16, 2001

Mineral County Miner-April 26, May 3, 10 and 17, 2001

The Silver World-April 26, May 3, 10 and 17, 2001

Representatives of the Forest Service also met with the Mineral and Hinsdale County Commissioners to explain the exchange proposal as part of those entities normal, regularly scheduled, public meetings. In addition, the Mineral County Board of County Commissioners sponsored a public meeting on the proposed land exchange on June 5, 2001 in Creede, Colorado.

The Forest Service received 95 written scoping responses from individuals, non-governmental entities and other public agencies following publication of the legal notices.

During the 30-day comment, 23 written comments were received on the Environmental Assessment for Comment. These comments and responses to those comments are provided in Exhibit 6 of the EA.

## Changes in the Environmental Assessment in Response to Public Comment

Changes from the EA for Comment are provided in Section 1.5 of the Final EA. Exhibit 6 contains the public comments received on the EA for Comment and responses to those comments. In certain situations, additions and/or changes have been made to the EA in response to comments. Those changes and the corresponding section reference of the EA are listed in Section 1.5 of the Final EA.

## Finding of No Significant Impact

Based on my review of the EA, including appendices and supporting documents, it is my conclusion that the Selected Alternative is not a major Federal action that would significantly affect the quality of the human environment as defined in 40 CFR 1508.27 and discussed below. Therefore, an environmental impact statement will not be prepared.

**Consideration for the context of the project.** The context is local to Mineral, Hinsdale and Rio Grande Counties with implications for the immediate area only.

**Consideration of both beneficial and adverse impacts.** I conclude that the benefits of the selected action are not significant in context of the direct, indirect, and cumulative effects.

**Consideration of the effects on public health and safety.** This exchange will not affect public health or safety. Management of hazardous substances in connection with the non-Federal parcels has been thoroughly analyzed and determined to be in conformance with applicable federal, state and local regulations. Mining Claims that had hazardous substances were dropped from

consideration. Hazardous substances are not present on any of the non-Federal parcels or Federal parcels to be exchanged.

**Consideration of unique characteristics of the geographic area.** The only “unique characteristics of the geographic area” as defined at 40 CFR 1508.27(3) which exist in the area are floodplains and wetlands. The selected action would provide a net gain of wetlands and a net loss of floodplains. All wetlands and floodplains lost from Federal ownership would be protected from development or other disturbances.

**Consideration of the degree to which the effects are likely to be highly controversial.** There are no scientific disputes over the likely effects of the project. Controversial, with respect to its definition under the National Environmental Policy Act, applies to agreement on the affects of an action, not to the popularity/acceptance of a proposed action Therefore; I conclude that the environmental effects of the decision will not be highly controversial.

**Consideration of the degree to which effects are uncertain or unknown.** The exchange is not likely to result in effects on the human environment that are highly uncertain or involve unique risk. It is similar to many past actions that have occurred on the Rio Grande National Forest and National Forests throughout Colorado and the United States. The probable effects are well understood and have been disclosed.

**Consideration of the degree to which this action will set a precedent for future actions with significant effects.** Neither the land exchange nor this decision will set a precedent. Similar exchanges have occurred in the past, nationally and locally. They are completed by the USFS and by other public land management agencies with the objective of consolidating public land ownership, and each exchange is evaluated on a case-by-case basis and on its own individual merits. I conclude that this action does not establish a precedent for future actions.

**Consideration of the action in relation to other actions with individually insignificant but cumulatively significant impacts.** The EA evaluates the land exchange in context of past, present, and potential future actions that could lead to cumulative impacts, and no significant impacts were identified. I conclude that, given the Conservation Easement that will be placed on the conveyed Federal land; this exchange will not lead to significant cumulative impacts.

**Consideration of the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places, or cause loss or destruction of significant scientific, cultural, or historic resources.** Cultural resource inventories were completed for NFS lands and the selected action will not affect any site, structure, or object. The selected action will not cause loss or destruction of significant scientific, cultural, or historic resources.

**Consideration of the degree to which the action may affect threatened or endangered species, or critical habitat.** As determined in the Biological Assessment the Canada lynx and bald eagle, both listed as threatened species by the Fish and Wildlife Service, could potentially be affected by the proposed federal action. However the Biological Assessment concludes that the proposal may affect but is unlikely to adversely affect either the bald eagle or Canada Lynx. Overall, the exchange would likely benefit the lynx because covenant restrictions would protect all but 3 acres of Lynx habitat given up by the Federal Government and Federal protection would be provided for approximately 174 acres of suitable lynx habitat that will move to public ownership. U.S. Fish and Wildlife Service concurred with this finding on December 10, 2002.

**Consideration of whether the action violates or threatens to violate federal, state, local laws or requirements imposed for protection of the environment.** The land exchange does not violate nor threaten to violate any federal, state, or local laws, regulations, or requirements for the protection of the environment. The Biological Evaluation considers sensitive species. Since this EA was initiated, new species have been added to the Sensitive Species List. I have determined that this action and assessment are “well underway”, as provided by Forest Service Manual 2600, Chapter 2670, and therefore do not need to include the additional sensitive species.

## Public Interest Determination

After reviewing the EA and public comments received during the NEPA process, I am well convinced that this land exchange is in the public interest. Per the requirements of 36 CFR 254.3(b)(2)(i), in my opinion, the resource values and public objectives served by acquisition of the non-Federal lands exceed those of the NFS lands that are to be conveyed. This exchange will result in acquisition of 814.90 acres of valuable resource lands near the Continental Divide, in the Bonafacio and Nicomodes watersheds, and the Long Ridge area. These lands provide important resource values in Hinsdale, Rio Grande and Mineral Counties as described above. On the other hand, while conveyance of the NFS lands to the non-Federal Parties may result in the loss of some limited recreational opportunities, no loss of important wildlife habitat will occur, and the management of property boundaries will be simplified. The loss of recreational use will be minor with the mitigation provided in the EA. Per 36 CFR 254.3(b)(2)(ii), the intended uses of the conveyed NFS land will not substantially conflict with established management objectives on adjacent NFS lands.

## **Findings Required by Other Laws and Regulations**

### **Executive Orders 11988 and 11990**

The Forest Service has evaluated the proposed exchange in accordance with Executive Order (EO) 11988 “Floodplain Management” and Executive Order 11990 “Protection of Wetlands” and is in compliance. A net increase of 25.99 acres of wetlands will be accomplished through this exchange. Therefore, the exchange is in compliance with EO 11990. A net loss of 34.01 acres of floodplain would occur through this exchange. Because no development will be allowed in the future, there should be no change (increase) in any downstream or onsite flood hazard. Therefore, the exchange is in full compliance with EO 11988.

### **Executive Order 13186—Migratory Birds**

The Forest Service has evaluated the exchange for its effects upon migratory birds, as detailed in EO 13186 and is in compliance.

### **Endangered Species Act**

The Biological Assessment determined that the land exchange ‘may affect, but is not likely to adversely affect’ the Canada lynx and bald eagle, threatened species. The U.S. Fish and wildlife Service has concurred with this finding.

### **National Historic Preservation Act**

Heritage resource inventories have been completed on the NFS parcels. The State Historic Preservation Officer approved the cultural resources clearance and subsequent reports.

### **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**

Field examinations of the NFS and non-Federal parcels have been completed. Mining claims that had hazardous substances that could contribute to environmental degradation have been dropped from consideration. No evidence was found that hazardous or potentially hazardous substances have been used, stored, released or disposed of on any non-Federal parcel accepted through this exchange.

## Implementation Date

If no appeal is filed, implementation of this decision may occur on, but not before, 5 business days from the close of the appeal filing period (described below). If an appeal is filed, implementation may not occur for 15 days following the date of appeal disposition. (36 CFR 215.10)

## Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 215. To appeal this decision a person must submit a written appeal to USDA, Forest Service, Region 2, Attention: Appeal Deciding Officer, P. O. Box 25127, Lakewood, Colorado 80225-0127, within 45 days of the date of publication of a legal notice of this Decision in the Valley Courier. Appeals must be received in that office or be postmarked to that office on or before the 45th day of the appeal filing period to be considered.

Any notice of appeal must meet the following requirements:

1. State that the document is a Notice of Appeal filed pursuant to 36 CFR Part 215;
2. List the name, address and, if possible, the telephone number of the appellant,
3. Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;
4. Identify the specific changes in the decision that the appellant seeks or portion of the decision to which the appellant objects;
5. State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified at 36 CFR 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

A copy of the EA is available for public review at the Rio Grande National Forest, 1803 West Highway, Monte Vista, CO 81144 or the Rio Grande National Forest, Divide Ranger District, 13308 West Highway 160, Del Norte, CO 81132. Also, the EA is available on the Rio Grande National Forest website:  
<http://www.fs.fed.us/r2/riogrande/planning/planning.htm>.

