

File Code: 6270-1-2 (L)
05-2734-A

Date: FEB 15 2005

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 7941
Missoula, MT 59807

Dear Mr. Geist:

This letter is the final response to your October 28, 2004, Freedom of Information Act (FOIA) appeal. You are appealing the decision of October 7, 2004, denying 20 pages of land appraisal and land exchange records pursuant to Exemption 5 of the FOIA. You filed this appeal on behalf of the Buffalo Field Campaign.

In your original request dated June 24, 2004, you requested a copy of "... public records held by the agency regarding the Royal Teton Ranch land acquisition and easement."

On August 20, 2004, Northern Regional Office Director of Information Systems Martin L. Prather provided you with a partial response to your request. On October 7, 2004, Acting Regional Forester Susan Prentiss withheld 20 pages of records. On December 17, 2004, Acting Deputy Chief for National Forest System Frederick L. Norbury released 5 pages to you, in entirety.

After careful consideration, we are releasing 14 pages in full and 1 page in redacted form. This page is being redacted pursuant to Exemption 5 of the FOIA.

Exemption 5, 5 U.S.C. 552(b)(5), provides for protection of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to "prevent injury to the quality of agency decisions." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). This privilege protects the decisionmaking processes of Government agencies, and protects "advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." Id. at 150. Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and supervisors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reason and rationales that were not in fact ultimately the grounds for an agency action. See e.g., Russell v. Department of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982); Coastal States Gas Corp. v. Dept. of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Jordan v. U.S. Dept. of Justice, 591 F.2d 753, 772-73 (D.C. Cir. 1978) (en banc).

Mr. Darrell Geist

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There are two fundamental requirements, both of which must be met in order for the deliberative process privilege to be invoked. First, the communication must be predecisional. Second, the communication must be deliberative, i.e., it must be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. Jordan, 591 F.2d at 773 (D.C. Cir. 1978); see also Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

We have determined that the redacted page contained pre-decisional and deliberative information warranting protection from disclosure through Exemption 5.

This is the Agency's final determination on your FOIA appeal. You have the right to seek judicial review of the determination in an appropriate United States District Court pursuant to 5 U.S.C. 552(b)(4)(B).

Sincerely,



for
TOM L. THOMPSON
Deputy Chief
National Forest System

Enclosures

cc:

Regional Forester, R-1

cons. ezmt

BUYER'S STATEMENT OF SETTLEMENT

File Number: 99-114a

Settlement Date: 08/30/99

Proration Date: 08/30/99

Buyers: United States of America

Sellers: Rocky Mountain Elk Foundation

Property Address: See Attach

	Charges	Credits
Selling Price.....	1,799,270.00	
Remb. Closing Fees to RMEF	2,713.34	
Sub-totals	1,801,983.34	0.00
Balance due from Purchaser		1,801,983.34
Totals	1,801,983.34	1,801,983.34

Approved and accepted this 30th day of August, 1999

Robert J. Danner - USDA - Forest Service
 for United States of America
 SS#: _____ SS#: _____

SS#:

SS#:

FUTURE OR CURRENT MAILING ADDRESS:

CE

Cons. Ezmt.

BUYER'S STATEMENT OF SETTLEMENT

File Number: 99-114

Settlement Date: 08/30/99

Proration Date: 08/30/99

Buyers: Rocky Mountain Elk Foundation

Sellers: Church Universal and Triumphant

Property Address: See Attached

	Charges	Credits
Selling Price.....	1,799,270.00	
Title Insurance to SECURITY TITLE OF PARK COUNTY	2,427.34	
Escrow Fee to SECURITY TITLE OF PARK COUNTY.....	250.00	
Recording of Deed.....	36.00	
		} to be reimbursed by Doc/USFS
Sub-totals	1,801,983.34	0.00
Balance due from Purchaser		1,801,983.34
Totals	1,801,983.34	1,801,983.34

Approved and accepted this 30th day of August, 1999

[Signature]
Rocky Mountain Elk Foundation
SS#: 81-04,21425

SS#:

SS#:

SS#:

FUTURE OR CURRENT MAILING ADDRESS:

Alan —
Keep this house
Ron

CHURCH - RMEF

CONSERVATION EASEMENT CONSIDERATIONS

The following considerations are offered to assist those involved in the development of a conservation easement on lands owned by the Church Universal and Triumphant, Inc. (the "Church").

Above all else, the Church is a spiritual organization. Spiritual, in this context, extends to and, among other things, is synonymous with a deep respect for and affinity to the natural environment and all living things contained in and effected by that environment.

Any venture contemplated by the Church must be considered and analyzed in relationship to the long-term goals of the Church. Any venture contemplated by the Church, including the development of a conservation easement on Church lands, must assist and extend the long-term global efforts of the Church and expand and maintain a presence in keeping with the mission of the Church at its base of operation in Park County, Montana. Of necessity, this includes the use and development of Church lands.

The long-term goals of the Church as those goals exist today include, but are not limited to the development of:

- ▶ A self-contained community in harmony with the natural environment while recognizing the practical needs of the community.
- ▶ Various forms of housing for both employees and permanent residents.
- ▶ Medical facilities, including a hospital.
- ▶ A professional office complex.
- ▶ Visitor facilities with interpretive centers.
- ▶ A destination resort.
- ▶ Spiritual and meditation facilities, including a cathedral, training and conference facilities.
- ▶ Assisted living facilities.
- ▶ Recreational facilities.
- ▶ A scientific center for the use of various scientific disciplines.

The long-term goals listed above are not intended to be all inclusive. Rather, as stated above, they are offered to assist those involved in the development of a conservation easement on the lands owned by the Church.

In summary, the Church obviously desires to keep all of its options open while at the same time accommodating the spirit and intent of a conservation easement to protect the natural environment, provide for wildlife habitat, and assure that future bison migrations are not impeded within the bison corridor to be developed.

The list of long-term goals set forth above, while perhaps not all inclusive, are not all intended to be constructed on the lands which will be subject to the conservation easement. Certain of the development areas could and undoubtedly will be developed on lands not subject to the conservation easement. In this connection, however, the Church is willing to consider an expansion of the conservation easement presently proposed, however, any expansion further complicates the Church's ability to determine what prohibitions should be considered in the conservation easement to be developed and what other Church lands might be available and suitable for future development.

I trust that the above will be of assistance to you prior to our meeting on Friday, March 19th.

MURRAY L. STEINMAN



ROCKY MOUNTAIN ELK FOUNDATION

2291 W. Broadway

Missoula, MT 59802

P.O. Box 8249

Missoula, MT 59807-8249

(406) 523-4500

Field Office Fax (406) 523-4550

General Office Fax (406) 523-4581

E-mail - rmef@rmef.org

Via Telefax

~~December 28, 1998~~

Aug 13 99

Mr. Norman C. Wheeler & Associates
221 East Mendenhall
PO Box 1053
Bozeman MT 59715
FAX: (406) 587-2638

RE: Royal Teton Ranch Appraisal

Dear Clark:

It is my understanding that you have requested written instructions concerning ongoing appraisals that you are conducting on behalf of the Rocky Mountain Elk Foundation regarding the acquisition of a portion of the Royal Teton Ranch. Following are several issues, which we would like you to address:

1. **Grazing Rights.** It is our understanding that you are continuing to appraise the fair market value of the grazing rights / grazing easement which the Department of the Interior is acquiring from the Church Universal and Triumphant. Please continue to coordinate the details of that appraisal with Joe Sabol and Karen Kovaks.
2. **Town of Evendale Lots.** Please provide us, on a consulting basis, with your estimate of i) the value of all the lots in the Township of Evendale owned by Frank and Delores Kopland, and ii) the value of Outlot A deeded to Roy N. Armstrong. In the event that the Forest Service requests a full appraisal to acquire that property, then this will need to be done. Please coordinate with John Hickey on this matter. Additionally, the Forest Service has requested that you specifically address the impact of the Township of Evendale Lots within the exterior boundary of the RTR purchase lands on the value of the property RMEF is acquiring.
3. **Acquisition of Cutler Lake Property.** The Church has offered to sell in fee the portion of RTR east of the county road by Cutler Lake that was previously identified as Conservation



Mr. Norman C. Wheeler & Associates

August 13, 1999

Page 2

Easement acquisition. Please provide an appraisal supplement identifying the additional cost to acquire this property in fee.

4. **Conservation Easement.** The parties are currently close to finalizing a conservation easement for the Devils Slide property. A copy of this conservation easement is attached. There are several changes from the draft conservation easement you used to formulate the value for the RTR acquisition. For instance, there are new, modified, or additional permitted uses including a retained homesite / development site across from the Church Headquarters, retained sites for significant development (wells, tanks, sewage treatment, etc.) pertaining to the potential Spring Creek development, land application of sewage effluent, and the opportunity to subdivide the conservation easement property into two parcels). Please provide an appraisal supplement, which addresses the attached conservation easement. In addition, the Church has asked to eliminate the permanent restriction on Mol Heron water withdrawals (Section V, Subsection S). The water rights are currently under a \$100,000, 20-year lease to the state of Montana. This issue has not been resolved, but please also address any change on valuation if this provision were removed.

Please call me to discuss these matters, and the timing for completing these appraisals. We have scheduled a closing for August 31st, and would appreciate rapid responses to these requests.

Thank you for your continued efforts in assisting the appraisal and conveyance of Royal Teton Ranch properties. I look forward to speaking with you soon.

Sincerely,

Grant D. Parker
General Counsel

GDP/arb

Enclosures (via telefax)

c: Joe Sabol
Karen Kovaks
Bob Dennee
Ron Marcoux

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Attachment to Kirk Wheeler's
letter -

DRAFT - 12 August, 1999

DEED OF CONSERVATION EASEMENT
ROYAL TETON RANCH - DEVIL'S SLIDE AND CUTLER LAKE AREAS

THIS DEED OF CONSERVATION EASEMENT ("Easement"), is made as of this ____ day of _____, 1999, by the CHURCH UNIVERSAL AND TRIUMPHANT, INC., a Montana non-profit Corporation, whose address is P.O. Box 5000, Corwin Springs, Montana 59030 (the "Grantor"), and the ROCKY MOUNTAIN ELK FOUNDATION, INC., a Montana non-profit corporation whose address is 2291 West Broadway, P.O. 8249, Missoula, Montana 59807-8249 (the "RMEF" or "Grantee"), and RMEF's successors and assigns;

WITNESSETH:

WHEREAS, the Grantor is, above all else, a spiritual organization founded on certain precepts, which precepts when viewed individually or collectively enhance the good of mankind; and

WHEREAS, one such precept is the attainment of a symbiotic relationship between mankind and the natural environment, for the common good of both; and

WHEREAS, there exists now, and for some time in the future, a need to preserve and protect the surviving indigenous North American bison herd, elk herd, and other wildlife of Yellowstone National Park, the survival of which it appears is based on the need to allow the free and unhampered migration of these animals outside the boundary of the Park; and

WHEREAS, the Grantor finds itself in a unique position to aid and assist in the preservation of the Yellowstone National Park bison and other wildlife by setting aside a portion of its lands, in perpetuity, thereby providing in the natural world, a safe haven for the bison; and

WHEREAS, the purpose of this conservation easement is to protect forever the natural wildlife habitat, biodiversity, agricultural productivity, open space and scenic qualities of the real property described below; and

WHEREAS, it has been determined that Grantor's lands constitute a valuable element of the natural habitat of the Greater Yellowstone Ecosystem, the Yellowstone River Watershed, and the ecosystem's wildlife, ecological, scenic, aesthetic, and open space values, including flora, fauna, and the other natural amenities of the lands; and

WHEREAS, the Grantor's lands provide significant winter range and crucial habitat for many indigenous species including elk, bighorn sheep, mule deer, pronghorns, grizzly and black



United States
Department of
Agriculture

Forest
Service

Gardiner Ranger District
Gardiner, Montana 59030

OCT 18 1981
GALLATIN NATIONAL FOREST
SULLY, MONTANA

Reply to: 5430 Exchanges

Date: 10/09/81

Subject: Royal Teton LTD. (Former Forbes Ranch)

To: Forest Supervisor

Attached is a letter from Mr. Ed Francis of Royal Teton, LTD., proposing a land exchange involving the former Forbes Ranch.

I have delineated the National Forest lands which Mr. Francis proposes to acquire on the map labeled "Attachment B." The offered lands are located on the Livingston Ranger District of the Gallatin National Forest and the Whitehall Ranger District of the Deerlodge National Forest.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Larry N. Lewis
LARRY N. LEWIS
District Ranger

Enclosures



ROYAL TETON, LTD.
Box A
Livingston, Montana 59047

October 5, 1981

Mr. Larry Lewis
District Ranger, Gardiner District
UNITED STATES DEPARTMENT OF AGRICULTURE
UNITED STATES FOREST SERVICE
GALLATIN NATIONAL FOREST
Gardiner, Montana 59030

Re: Proposed Land Exchange

Dear Larry;

In accordance with our conversation of last week, I would like to take this opportunity to propose a land exchange between the United States Forest Service and Royal Teton, Ltd. (dba Royal Teton Ranch). This exchange is proposed in recognition of the following circumstances:

1. U.S.F.S. has certain land completely encompassed within the boundaries of Royal Teton Ranch, making efficient and beneficial use of such lands problematical at best.

2. The general public does not have access to much of these isolated forest lands within the ranch.

3. Royal Teton does not plan to (1) grant any additional access or easements across its lands, due to difficulty of management and control, or (2) sell any of the forest lands adjacent to U.S.F.S. land located on the ranch.

4. Royal Teton would like to consolidate the lands within its boundaries into one manageable unit according to geographical barriers.

5. Presumably, it would be a desirable management goal, as well as a substantial benefit to the public, for U.S.F.S. to exchange isolated or inaccessible tracts for the consolidation of other more accessible forest lands within nearby National Forest boundaries.

In view of these circumstances, Royal Teton, Ltd. hereby offers to exchange for the following U.S.F.S. forest lands in Park County, Montana:

Township 8 South, Range 7 East:

Section 3: S 1/2 SW 1/4, SW 1/4 SE 1/4, Lots 2 and 3	213.32 ac.
Section 4: Lots 4,5,6,9 and 10	174.73 ac.
Section 10: SW 1/4, Lots 1,2,3,4, 5,6,7,8,9,10,11 and 12	560.50 ac.
Section 14: All	640.00 ac.
Section 24: W 1/2 NW 1/4, S 1/2 SW 1/4, SW 1/4 SE 1/4, lots 7 and 8	293.13 ac.
Section 26: NE 1/4 NW 1/4, N 1/2 NE 1/4, SE 1/4 NE 1/4, N 1/2 SW 1/4, SE 1/4	400.00 ac.
Section 34: E 1/2	320.00 ac.
Section 36: W 1/2 NE 1/4, N 1/2 S 1/2, S 1/2 SE 1/4, Lots 1 and 2	399.77 ac.

Township 8 South, Range 8 East:

Section 30: SE 1/4 SW 1/4, Lots 2,3,4, 5,6,7 and 8	316.02 ac.
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Township 9 South, Range 7 East:

Section 4: S 1/2 S 1/2	160.00 ac.
Section 10: Lots 1 and 2	73.32 ac.
Section 12: S 1/2 NW 1/4, NE 1/4 NW 1/4, NE 1/4, Lot 5	320.63 ac.
Section 14: All, outside extended boundary Yellowstone National Park	411.00 ac.
Section 16: All	640.00 ac.
Section 17: Lots 1,2,3 and 4	151.28 ac.
Section 20: W 1/2 NE 1/4, NW 1/4 SE 1/4, Lots 1,2,3,6 and 7	288.68 ac.
Section 22: N 1/2 SW 1/4, NW 1/4 SE 1/4, Lots 3,4,5,6 and 7	<u>288.73 ac.</u>
Total Acreage	5,651.11 ac.

In exchange for these lands, we would propose to offer the following privately-owned lands within existing National Forest boundaries to U.S.F.S.:

Township 6 South, Range 6 East:

Section 25: All	640.00 ac.
Section 35: All	640.00 ac.

Township 7 South, Range 6 East:

Section 3: All	640.00 ac.
Section 9: All	640.00 ac.
Section 11: All	640.00 ac.
Section 15: All, N of Rock Creek	520.00 ac.
Section 16: N 1/2 SW 1/4, SE 1/4 NW 1/4, N 1/2 NE 1/4 NW 1/4, SE 1/4 NE 1/4 NW 1/4, SW 1/4 NW 1/4 NE 1/4	160.00 ac.
Section 17: All	640.00 ac.

Township 2 South, Range 4 West:

Section 13: W 1/2, NW 1/4 NE 1/4, S 1/2 SE 1/4, Lots 1,2,3,4,5 and 6; excepting therefrom the Highland Mary Lode Mining Claim, Survey No. 7985	565.18 ac.
Section 35: All; excepting therefrom the Copper King Lode Mining Claim, Survey No. 9649	<u>618.87 ac.</u>
Total Acreage	5,704.05 ac.

It should be noted that Royal Teton, Ltd. has not purchased or entered into an agreement to purchase the lands listed in Township 6 South, Range 6 East or Township 7 South, Range 6 East. However, we have reached a verbal understanding with the owner that the land could be acquired at a certain price and terms if U.S.F.S. and Royal Teton, Ltd. could reach an agreement upon lands to be exchanged for. It should also be noted that the owner of those lands is motivated to sell in contemplation of another ranch he wishes to purchase out of state - and would only continue to be so as long as that ranch

Mr. Larry Lewis

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is available for purchase. It is therefore essential that a tentative agreement for exchange be reached at the earliest possible date.

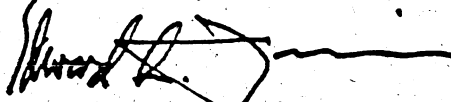
A written offer for exchange on the properties listed in Township 2 South, Range 4 West has previously been made to the Deer Lodge National Forest District Ranger. A copy of that offer is enclosed for your reference.

Please feel free to consider this proposal at your convenience and contact me at any time for further discussion. I can be reached at the ranch at (406) 848-7758, or in Los Angeles at (213) 880-5300. I will be in California for several weeks during the month of October, but expect to return to Montana toward the end of the month.

Thank you for your consideration.

Very truly yours,

ROYAL TETON, LTD.



Edward L. Francis
President

EDWARD L. FRANCIS
P.O. Box 768
Woodland Hills, CA 91365

June 5, 1981

Mr. Roger Seamans, District Ranger
c/o Bob Barwick, Real Estate Specialist
DEERLODGE NATIONAL FOREST
U.S. FOREST SERVICE
P.O. Box 400
Butte, Montana 59701

Re: Offer of Property for Trade to
Deerlodge National Forest

Dear Mr. Seamans:

I am herewith offering property owned by me within the designated boundaries of the Deerlodge National Forest for exchange with other select lands owned by the Deerlodge or Gallatin National Forests. The description of the parcels owned by me is as follows:

	<u>Description</u>	<u>Acreage</u>
<u>Parcel 1:</u>	Lots 1 through 6, inclusive, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$, of Section 13, Township 2 South, Range 4 West, M.P.M.; excepting therefrom, however, the Highland Mary Lode Mining Claim, Survey No. 7985.	565.18 acres
<u>Parcel 2:</u>	Lot 1, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, Township 2 South, Range 4 West, M.P.M.; excepting therefrom, however, the Copper King Lode Mining Claim, Survey No. 9649.	618.87 acres

For each of the two sections I am enclosing the following information for your files:

1. Copy of Warranty Deed
2. Copy of Title Insurance Policy

I would intend to transfer title to the parcels to the USFS, if an exchange is consummated, free and clear of all liens

Mr. Roger Seamans
June 5, 1981
Page 2

and encumbrances except easements of record, mineral reservations, and standard title company exceptions. All mortgages, contract interests and timber interests would be cleared.

I am also including certain additional information requested by Mr. Bob Barwick of your agency, relative to each of the two parcels, as follows:

Parcel 1: The property was purchased on April 18, 1980 (date of closing) for a total purchase price of \$125,000.00. The terms included the assumption of an existing Contract for Deed with balance due of \$48,113.23, and the balance in cash. The approximate balance now owing is \$25,903.78. No timber has been sold or reserved on the property. I believe the minerals may have been reserved for Burlington Northern Railroad, but that would have to be verified.

Parcel 2: The property was purchased on July 28, 1980 (date of closing) for a total purchase price of \$140,000.00. The terms included the assumption of an existing Contract for Deed with balance due of \$41,975.02, and the balance in cash. The approximate balance now owing is \$29,200.52. The Timber Purchase Contract shown on the title policy in favor of WICKES FOREST INDUSTRIES, expired on March 21, 1981 (a copy is enclosed for your records). I received payment from Wayne Stephens for the timber sale in a separate transaction after closing. Only a very small amount of timber in the SE $\frac{1}{4}$ of Section 35 was ever harvested. Again, I believe the minerals may have been reserved by the original railroad conveyance, but that would have to be verified.

In accordance with Mr. Barwick's statement to me, all of the within information is to be considered strictly confidential except for purposes of the proposed land exchange transaction. Please don't hesitate to contact me at the above address or at (213) 880-5563 for further information or discussion pursuant to the project.

I hereby give you my permission to enter upon and inspect the subject properties, under your own supervision and at your own risk, in order to proceed with the study.

I will await further communication from your office or from Mr. Barwick as to the feasibility or desirability of the exchange and on taking further steps. As I mentioned to Mr. Barwick, I have considered certain properties in the Gallatin National Forest for the other end of the exchange, but I would

Mr. Roger Seamans
June 5, 1981
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also be willing to consider your select lands in the Deerlodge National Forest. Please let me know when you would like to proceed with this aspect of the proposal.

I am motivated in this transaction both by the excellent prospects for consolidating public ownership in the beautiful Tobacco Root Mountains area, and by the potential acquisition of other lands more suited to private agricultural and recreational uses and which may be more of a burden for public administration at the current time.

Thank you for your consideration.

Very truly yours,

EDWARD L. FRANCIS

ELF:lb

Enclosures

cc: Bob Barwick, Real Estate Specialist
Deerlodge National Forest

CERTIFIED MAIL NO. 0235122
RETURN RECEIPT REQUESTED