

High Country Conservation Advocates • Colorado Wild Public Lands • The Wilderness Society • Center for Biological Diversity • INFORM • San Juan Citizens Alliance • EcoFlight • Rocky Mountain Recreation Initiative • Sheep Mountain Alliance • Rocky Mountain Wild • Wilderness Workshop • Rocky Smith

April 7, 2022

Chad Stewart
Forest Supervisor, GMUG National Forest
2250 Highway 50
Delta, CO 81416
chad.stewart@usda.gov

Re: Mt. Emmons Land Exchange

Dear Forest Supervisor Stewart,

The undersigned organizations and entities, consisting of High Country Conservation Advocates, Colorado Wild Public Lands, The Wilderness Society, Information Network for Responsible Mining, Center for Biological Diversity, San Juan Citizens Alliance, EcoFlight, Rocky Mountain Recreation Initiative, Sheep Mountain Alliance, Grand Junction Area Broadband (Great Old Broads for Wilderness), Rocky Mountain Wild, Wilderness Workshop, and Rocky Smith work to conserve, restore, steward, and connect communities to public lands in Colorado and the Southern Rockies. While we may have different priority issues, we share a commitment to lasting protections for public lands, to healthy ecosystems that are resilient to climate change and sustain biodiversity and human communities, and to equitable access to public lands and healthy environments. Together, we have a direct interest in protecting watershed health and preventing the degradation of ecosystems.

To achieve these goals, we seek to foster inclusive conversations about public lands conservation and management while supporting locally-led conservation efforts. In light of this shared commitment, after reviewing the initial information made available to the public concerning the proposed Mt. Emmons land exchange, we submit the following comments and requests for your consideration.

All Privatized Lands Exchanged from the U.S. Forest Service (USFS) to Mt. Emmons Mining Company (MEMC) Should Have Adequate and Enforceable Protections

First, all lands to be privatized should have enforceable restrictions against mining and development. The agency clearly has authority, and even the duty, to do this:

Reservations or restrictions in the public interest. In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.¹

¹ 36 CFR 254.3(h).

We understand that this land exchange proposal is unique because of the elevated importance of determining how the exchanged lands are ultimately used and protected. For over four decades, the Gunnison Valley community has been advocating against the development of a large-scale mine at the headwaters of its watershed. The public benefit of this land exchange proposal is directly dependent on the ultimate use and protections for the lands exchanged to private ownership as well as the use of private lands currently owned by MEMC.

The uses of lands at the Mt. Emmons site and surrounding the site is the heart of this issue. When paired with the necessary restrictions on private lands this proposal has the potential to eliminate the threat of mining on Mt. Emmons. However, eliminating the potential use of exchange lands for mining or development requires binding agreements that prohibit mining and development (here addressed by proposed conservation easements). At this point in time, MEMC has not yet agreed to easements that provide these protections on all lands exchanged from the USFS to MEMC. Specifically, MEMC has not yet agreed to include prohibitions against mining and development on lands surrounding the mine water treatment plant (WTP). Furthermore, MEMC has not yet agreed to prohibit development on all lands received through the proposed land exchange.

Given this, we request that MEMC be required to provide an easement on lands surrounding the WTP, and that that easement prohibit mining and development. Activities that MEMC deems necessary could – as appropriate – be explicitly permitted. In addition, lands exchanged from MEMC to the USFS should also have prohibitions against mining in place. These protections are necessary to protect the public’s interest and to ensure that the lands exchanged to private will be used the same way that they are used today.

Second, the USFS should consider what safeguards will be in place to protect water quality originating from the historic Keystone Mine site. There is a long history of the Gunnison Valley community advocating for the protection and clean-up of discharges from the historic Keystone Mine. A portion of the proposed exchange lands have been impacted by historic mining and are still impaired by these activities. The agency should describe to the public the protections that will be in place once these lands are transferred from the national forest to private hands. In doing so, we request that the USFS consider and respond to the following questions:

- Will there be bonding for the operation of the WTP on the exchanged Federal parcel 2?
- What local, state, and federal regulations will remain to provide oversight of discharges arising from the historic Keystone mine workings?
- What are the existing permits that regulate water quality discharge from the Keystone Mine site?
- How protective are the current discharge and stormwater permits associated with the Mt. Emmons property and how effective are they?

On the one hand, MEMC discharges from the WTP to Coal Creek. On the other hand, the Town of Crested Butte relies on Coal Creek for drinking water. Addressing these questions will better inform the community about the safeguards in place for its drinking water supply.

Conservation Easement Language Should Be Provided for Public Review

As described above, evaluation of whether the land exchange is in the public's best interest depends in large part on the ultimate use and protection of the lands exchanged. The conditions and terms of the conservation easements will ultimately control how well protected our community and watershed will be in the future. Furthermore, the easements will also dictate where the public can and cannot go, and for what purposes. Finally, an important part of evaluating whether a land exchange is in the public interest is an assessment of the value of the exchanged lands, and including these easements in the appraisal will be an important part of this assessment.

As such, we request that all conservation easement language be shared with the public to be evaluated alongside the other components of the land exchange proposal. We also encourage the USFS to include these easements as a condition of the exchange.² Such a restriction could be included in the conveyance documents.

The Public Review Process Should Be Unbiased, Transparent, and Accessible

We strongly encourage a thorough analysis of the possible impacts of this exchange, accompanied by broad and transparent public review. While we commend the additional opportunities that MEMC has provided for interfacing with the public, it is very important that an objective and transparent stakeholder process is created. MEMC's website³ that was developed by Western Land Group (WLG) relies on information provided by a company that has been hired as a consultant for the purpose of promoting the land exchange. The agency should not rely on outreach conducted by private entities to supplant elements of the NEPA process.

Essential to this process is the ability of the public to be able to compare the values of the federal and private parcels, and the public should be privy to related documents and management conditions affecting these lands. It is also critical that ample opportunities are afforded to the public to address issues that may not yet have been considered, or that may offer a different perspective on the proposal.

To that end, we request that the USFS lead a public engagement process that:

- Is designed to address stakeholder concerns and incorporate changes to the proposal if in the public interest;
- Records commenters' questions and any agency responses for everyone to see;

² Per 36 C.F.R. 254.3(h), the agency may place restrictions on the uses of federal lands that are exchanged into private ownership to "protect the public interest."

³ <https://www.mtemmonslandexchange.com>.

- Provides thorough and accurate responses to each question so that all interested stakeholders can receive the same response; and
- Is conducted by the USFS.

The USFS Should Support an Administrative Withdrawal

The website created by MEMC to describe the land exchange objectives refers to the inclusion in the Colorado Outdoor Recreation & Economy (CORE) Act of a federal mineral withdrawal for claims surrounding the Mt. Emmons property.⁴ While we wholeheartedly support this effort, we strongly encourage the agency to support an administrative withdrawal process under the Federal Land Policy and Management Act,⁵ and for this process to be simultaneously undertaken with the proposed land exchange. An application for administrative withdrawal would remove the lands in question from new claims for at least two years⁶ while stakeholders make progress towards a permanent withdrawal via legislation.

In conclusion, while MEMC is seeking to convey non-federal land in Gunnison and Saguache Counties in exchange for federal land in Gunnison County, close attention is being paid to the proposal and process by conservation organizations across Colorado. The multi-decade history of community efforts to prevent mining on Mt. Emmons, a legacy of public awareness and activism, and the important public lands and natural resources at stake, all combine to generate interest from beyond Crested Butte and Gunnison County.

Sincerely,

Julie Nania
Red Lady Program Director
High Country Conservation Advocates
PO Box 1066
Crested Butte, CO 81224
(970) 349-7104
julie@hccacb.org

Mark Pearson
Executive Director
San Juan Citizens Alliance
1309 East 3rd Ave./PO Box 2461
Durango, CO 81302
(406) 599-2008
mark@sanjuancitizens.org

Jane Pargiter
Executive Director
EcoFlight
307 L AABC
Aspen, CO 81511
(970) 429-1110 ext. 2
jane@ecoflight.org

⁴ <https://www.mtemmonslandexchange.com/the-proposal.aspx>.

⁵ 43 U.S.C. 1714.

⁶ Id. at 1714(b).

Rocky Smith
Forest Management Analyst
1030 North Pearl St. #9
Denver, CO 80203
(303) 839-5900
2rockwsmith@gmail.com

Mason Osgood
Executive Director
Sheep Mountain Alliance
PO Box 389
Telluride, CO 81435
(970) 728-3729
mason@sheepmountainalliance.org

Randi Spivak
Public Lands Program Director
Center for Biological Diversity
1411 K Street NW, Suite 1300
Washington, D.C. 20005
(310) 779-4894
rspivak@biologicaldiversity.org

Allison Gallensky
Principal Conservation Geographer
Rocky Mountain Wild
1536 Wynkoop St., Suite 900
Denver, CO 80202
(303) 546-0214
Alison@rockymountainwild.org

Jennifer Thurston
Information Network for Responsible Mining
2205 W. 136th Ave. Ste. 106-311
Broomfield, CO 80023
(303) 586-1437
jennifer@informcolorado.org

Rosalind B. McClellan
Rocky Mountain Recreation Initiative
1567 Twin Sisters Rd.
Nederland, CO 80466
(720) 635-7799
Rozmcclellan@gmail.com

Stefanie Davis
President
Colorado Wild Public Lands
PO Box 1772
Basalt, CO 81621
coloradowildpubliclands@gmail.com

Jim Ramey
Colorado State Director
The Wilderness Society
1660 Wynkoop St., Suite 1150
Denver, CO 80202
(303) 650-5818
jim_ramey@twc.org

Will Roush
Executive Director
Wilderness Workshop
PO Box 1442
Carbondale, CO 81623
(970) 963-3977
will@wildernessworkshop.org

Grand Junction Area Broadband
Sherry Schenk for the Leadership Team
Great Old Broads for Wilderness
379 Ridge View Drive
Grand Junction, CO 81507
970-596-8510
sherryleeschenk@gmail.com