



Colorado Wild Public Lands

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August 31, 2022

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

Re: Mt. Emmons Land Exchange

Dear Forest Supervisor Stewart,

Colorado Wild Public Lands (CWPL) is a 501(c)3 organization whose mission is to protect the integrity, size and quality of public lands in Colorado. In concert with this mission, we monitor land exchanges around the state; we also work to keep public lands both public and accessible.

After reviewing the information made available to the public concerning the proposed Mt. Emmons land exchange, we submit the following comments and requests for your consideration.

1. The Forest Service must make all exchange documentation available to the public at each stage of whatever NEPA process the agency invokes; this documentation includes, but is not limited to drafts, updates, and final versions of:

- Any and all land valuation documents, and appraisals
- Resource evaluations such as TES, wetland/floodplain studies and any other documentation of the public and biological resources on the lands in the exchange
- Management plans, and management agreements (MOUs/IGAs) among the Forest Service, the proponent, local government and any other parties active in future management of the lands in the exchange
- Conservation easements and extinguishment agreements.

CWPL continues to emphasize the importance of public review of appraisals and land value assessment documents related to public land exchanges during comment periods and prior to decision periods. These documents are the tools to evaluate FLPMA's Equal Value requirement for land exchanges and are a necessary component of the public interest

determination. Because the parcel configuration presented to the public in an EA or EIS for comment is determined by the appraisals, these documents drive the entire NEPA documentation process. We know that the Agency has the appraisals in hand when they release draft NEPA documents for public comment; the public should have an opportunity, as part of that process, to assess whether the lands in question constitute an equal exchange. Absent access to appraisals, the public is denied the opportunity for fully informed review and substantive comment.

This exchange merits careful assessment of equal value given its complexity, including conservation easements, contamination concerns, and acreage differential. It is imperative that the public be informed early and completely of this information. The agency must release the Valuation Consultation completed in March '22 in when it opens the formal Scoping comment period in September. It must also release the Appraisals and the TARPs once they are finalized and accepted for use in November (per the ATI), or with the opening of a subsequent comment period should the agency choose to do an EA or EIS.

Because the Agency is proposing to treat this exchange through a Categorical Exclusion, appraisals and any other supporting documentation on the public and ecological resources would ideally be complete and posted on the project website when the scheduled Scoping/comment period opens. However, since these will occur after the Scoping period closes, the agency must make these subsequent evaluations available for review upon completion.

2. We reiterate that categorical exclusion is an inappropriate means of conducting a land exchange of this scope and urge you to commit to increased public input and review periods.

We discourage any truncated review process through a Categorical Exclusion. Per FSH 1909.15 Chapter 31.2, there are extraordinary circumstances that warrant analysis under at least an Environmental Assessment:

“Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- (2) Floodplains, wetlands or municipal watersheds [FA at 48-49]

The exchange will result in a net loss of Canada Lynx habitat [FA at 29] and post-exchange, MEMC’s reclamation and water treatment activities in the Coal Creek watershed will no

longer be subject to federal oversight; Coal Creek is part of Crested Butte's municipal water supply and mis-management of these lands would adversely affect the Town.

Because of these circumstances and the highly valued access to public lands and infrastructure through the federal lands and the Forest Service should ensure rigorous public involvement and scrutiny. At a minimum, the agency must release all supporting documentation upon completion of the reports.

Additionally, a categorical exclusion will pre-empt any cumulative impacts analysis. Because CWPL monitors land exchanges on a statewide level and sees many impacts repeated in multiple exchanges, we discourage any analysis that treats this transaction in isolation.

3. CWPL is concerned about post-exchange water quality impacts.

The FA refers to water treatment and maintenance and re-vegetation plans that the Forest Service has not yet approved and mentions the current water treatment plant "has exceeded the end of its ... lifecycle" [FA at 15]. It also suggests that the proponent has some autonomy in ongoing oversight of reclamation plans, facilities and contractors:

"MEMC oversight of the facility and contractors would likely continue after the Federal Parcels are conveyed out of Federal ownership, though as today there would be no requirements by the Forest Service to do so." [FA at 16]

The documents currently available do not allay our concerns shared in the Southern Rockies Conservation Alliance letter [April 7, 2022] that adequate water quality protections will be in place post land exchange; the Agency should provide further details during scoping about these safeguards and other measures they might employ or why they believe the currently agreed upon measures are adequate.

Also, the FA indicates that the Agency will not receive the 5.5 cfs of surface water rights associated with Parcel A in the exchange [FA at 43]; we believe the public could and should benefit from those water rights and question why the Agency has declined to accept them. We also share the concerns expressed in the multi-party opposition to MEMC's conditional water rights; it is not apparent how those water rights are necessary for the Company's operations and the water rights should be abandoned.

4. The Forest Service should exercise a mineral withdrawal on the unpatented mining claims surrounding the MEMC lands included in the exchange.

However unlikely it may be, the unpatented mining claims present a danger of outside parties stepping in to prevent extinguishment of those rights under the Conservation Easement, which will not go into effect until after the land exchange closes. The FA does not state that the Agency *cannot* undertake this withdrawal, only that it is choosing not to, due to:

“unlikely support within the Forest Service, BLM, and Department of the Interior of the need for a mineral withdrawal given that the conservation easement ... would prohibit mining (i.e., the mining threat would be removed).” [FA at 53]

Because the mineral extinguishment is such an integral part of this exchange and drives so much public support for this proposal, we urge the Agency to do everything possible to ensure the outcome that it is touting to the public.

5. CWPL strongly opposes the Forest Service’s reliance on a private consultant to conduct outreach on this exchange. The Agency must conduct its own public outreach.

We commend the Proponent’s efforts to engage the public and acknowledge that this effort has been uncommonly extensive. However, the agency should acknowledge that the Proponent is not a neutral party and should never rely on outreach conducted by private entities to supplant the agency’s responsibility to engage the public in the NEPA process. In order to ensure a comprehensive, objective, and completely transparent public process the agency must act in its capacity as advocate for the public interest and conduct its own outreach process that represents all stakeholder points of view; CWPL and perhaps our peers such as HCCA could assist the agency in organizing and promoting an (or series of) public open house(s) to provide an informational forum on the proposal, the supporting documentation and how to participate in the Scoping Process.

6. CWPL discourages 3rd Party Contracting for NEPA Analyses.

Exhibit D of the ATI indicates that the Non-federal party is responsible for both contracting and paying for the appraisals [ATI at 20]. We reiterate our objections to this practice of the proponent contracting and paying for the third-party vendors that do the environmental/field studies, especially the appraisals. Under this practice, the proponent not only influences, but owns the work product, undermining the objectivity and, therefore, credibility of work that should be done by the agency charged with the responsibility to act in the public interest, not that of the proponent.

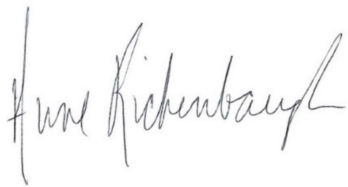
7. Other issues and outstanding questions

- a.) Section 5 of the Conservation Easement prohibits some activities in Zone 1 and not in Zone 2 [CE at 6-8]. Why are some activities allowed in Zone 2 and not prohibited?
- b.) We have reviewed the Conservation Easement, as it is available on the Proponent's project website; the Agency should also post it on their project website to ensure the public has easy access to it for scoping.

This exchange has the potential to truly benefit the public as well as the proponent in significant ways and it is one that CWPL would very much like to support as long as the agency undertakes every effort possible to ensure the outcomes promoted to date and provides the public its right to due diligence through a fair NEPA process. We urge you to please consider these concerns and implement the suggestions herein.

Thank you for your consideration of these comments.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Anne Rickenbaugh". The signature is fluid and cursive, with the first name "Anne" written in a larger, more prominent script than the last name "Rickenbaugh".

Anne Rickenbaugh
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