

Town of Crested Butte

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-A National Historic District-

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October 3, 2022

Chad Stewart
Forest Supervisor, GMUG National Forest
2250 Highway 50
Delta, CO 81416

Re: Mt. Emmons Land Exchange #61798

Dear Forest Supervisor Stewart:

On behalf of the Town Council for the Town of Crested Butte ("Town"), please accept the following comments to the United States Forest Service ("USFS") Grand Mesa, Uncompahgre and Gunnison National Forests' ("GMUG's") proposed land exchange ("Exchange") with Mt. Emmons Mining Company ("MEMC"). These comments are in addition to the other comments that the Town has submitted to the USFS in the Town's role as a Cooperating Agency, and any additional comments the Town will submit during the Cooperating Agency process.

The Town has enjoyed regular communication with you and your staff on many issues relating to the exchange. Continuing to work with the GMUG, Gunnison County ("County"), MEMC, and local partners on the exchange and related matters is an extremely high priority for the Town. As we have explained, in 2016, the Town, County, MEMC, and the State of Colorado entered into a Memorandum of Understanding ("2016 MOU"), in which the parties agreed to support MEMC in acquiring the Site, assist in ensuring compliance with environmental laws and regulations, and to pursue "disposition of the mining and mill site claims and fee simple lands in a mutually beneficial way." In 2021, the Town, County, and MEMC entered into another MOU in which the parties agreed that USFS lands to be conveyed to MEMC would be covered by a conservation easement, and that the parties would support withdrawal from mining of federal lands on Mt. Emmons and disposition of mineral claims and rights to mine following the exchange. The Town and County also supported claims by MEMC for reasonable amounts of water in feasible locations for mining reclamation and remediation activities.

COMMENTS ON PROPOSED EXCHANGE

1. **State Authority.** The Town understands that the Colorado Department of Public Health & Environment's Water Quality and Air Control divisions will continue to have water quality and air quality permitting authority over Federal Parcel 1 after the Exchange. The Feasibility Analysis ("FA") should explain, however, that the stormwater management permit and the discharge permit for the treatment plant do not currently impose the most current water quality standards and requirements. Further, the Town agrees that the USFS should seek confirmation as to whether the State will require MEMC to provide financial assurance

for operation of the water treatment plant should MEMC become unwilling or financially incapable of doing so. The Town supports MEMC continuing to contract with Trout Unlimited and the Colorado Division of Reclamation and Mining Safety (DRMS) to further remediate the mine site, but the FA should clarify that DRMS is acting purely as a contractor and is not exercising any regulatory authority over these remediation activities.

2. **Town and County Regulatory Authority.** The Town appreciates the reference to the Town and County regulatory authority over future work on Federal Parcel 1 but requests that the Agreement to Initiate ("ATI") be amended and that the Decision Document expressly affirm this local government authority. Once the Exchange is completed, the USFS will have no authority over MEMC's remediation work or operation of the water treatment plant. And as discussed above, apart from the CDPHE air and water quality permits, the State is not exercising any regulatory authority over remediation site work. Post-Exchange, the Town and County regulatory authorities will provide essential oversight and public transparency regarding the site remediation to protect public health, safety, welfare and the environment.

3. **Conservation Easement and Mineral Extinguishment Agreements.** The Town has asked the USFS to make the Conservation Easement and Mineral Extinguishment Agreement conditions of the land exchange. Instead, the USFS has proposed that the closing instructions for the exchange require the closing of these documents simultaneous with the exchange. The Town appreciates that the USFS has referenced the Conservation Easement in the FA and included it as a condition in the ATI. We do request, however, that the USFS amend the ATI to include a reference to the Mineral Extinguishment Agreement as well which is an extremely important companion agreement to the Conservation Easement and furthers the interests of the public. Finally, please include in the Decision Document the requirement that the Conservation Easement and the Mineral Extinguishment Agreement be placed in escrow and recorded. This approach will likely be sufficient to carry out the promises made between the Town, County, and MEMC in the 2021 MOU and earlier agreements. Should the execution and recordation of the Conservation Easement and the Mineral Extinguishment Agreement not occur properly, the Town will oppose the Exchange.

4. **Easements and rights-of-way.** As a general practice and as expressed in previous letters submitted in our evaluation of the Forest Plan Revision, the Town supports the proposed easements and rights-of-way on parcels to be exchanged to ensure perpetual access needed for administrative and public purposes. We hope to see these easement acquisitions continue with definitive language surrounding access to prevent disputes between private landowners and the USFS. The reservations listed in section X seem consistent with the Town's evaluation in the early stages of the project. The Town also supports absorbing USFS acquired parcels into adjacent management areas until new Forest and Travel Management Plans are completed.

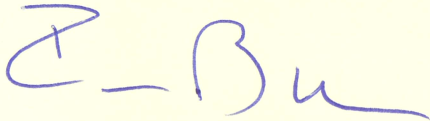
5. **Initiate Administrative Withdrawal.** The Town is disappointed that the FA under section XXIII.B.3 on page 52 does not indicate USFS support of an administrative withdrawal of the area including MEMC's unpatented mining claims. While the Conservation Easement and Mineral Extinguishment Agreement will drastically reduce the potential for mining to occur in and around the site, withdrawal of USFS lands is necessary to prevent mining around the site. Thus, the Town affirmatively urges the USFS to pursue an administrative withdrawal. As you know, the Town also joined in the August 25, 2022 request to the Secretaries of Interior and Agriculture by Senators Michael Bennet and John Hickenlooper, House of Representatives Member Joe Neguse, and Governor Jared Polis to initiate a withdrawal of mineral rights. Additionally, please note that Town has not had time to fully evaluate the 'checkerboard' strategy proposed by MEMC and cannot take a position on this strategy until we can confirm that the approach is feasible and defensible.

CONCLUSION

The protection of the watershed and landscape that surrounds the Town of Crested Butte from damage caused by extractive industry is at the forefront of our willingness to participate in the Mt. Emmons Land Exchange project. As the Town has pushed forward on the issue for the past four decades, we are happy to see the finish line draw near but we also understand that there is much work left to be accomplished. We are hopeful that the process will run smoothly through the end and that all the pieces will fall into place. To that end, the Town commits to stay engaged, and looks forward to a continuation of the open communication and problem-solving approach fostered by your staff.

We appreciate the continued opportunities in the future to participate as a partner with the GMUG National Forest on various projects that impact the landscape and watershed surrounding our Town. Please contact us as necessary if clarification is needed for any of the comments provided.

Sincerely,

A handwritten signature in blue ink, appearing to read "I-Bu", with a stylized flourish at the end.

Ian Billick, Mayor