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October 17, 2022

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

RE: Mt. Emmons Land Exchange Proposal

Dear Mr. Stewart,

WildEarth Guardians (“Guardians”) is a non-profit, public interest, education, and conservation organization whose mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has more than 200,000 members and supporters across the United States. This letter serves as Guardians’ comments on the scope of analysis of the environmental impacts of the proposed Mt. Emmons Land Exchange described in the Forest Service’s August 29, 2022 letter requesting public comments for the proposed land trade.

The Forest Service must revise its previous analysis regarding the potential withdrawal of public lands now that the agency and the Bureau of Land Management have filed an application for withdrawal at President Biden’s direction.

The Forest Service had indicated it would not be considering a request from members of the public to seek to have the public lands surrounding the selected parcels withdrawn from the mineral laws, claiming it was unnecessary because of conservation easements that will be put in place as part of the land exchange proposal. The agency’s reasoning was flawed. The conservation easements will only apply to land controlled by MEMC post-exchange. Mineral withdrawal, on the other hand, would apply to the public lands surrounding the MEMC lands.

The Forest Service has applied for mineral withdrawals under similar circumstances in the past. On October 21, 2021, the Forest Service filed an application requesting that the Secretary of Interior withdraw more than 200,000 acres of National Forest System lands on the Superior National Forest in northeastern Minnesota. *See* 86 FR 58299. In the Federal Register notice of the application, the Forest Service stated that the purpose of the requested withdrawal was “to advance a comprehensive approach to protect and preserve

the fragile and vital social and natural resources, ecological integrity, and wilderness values,” in the face of a threat from mining. *Id.*

Here, the conservation easement reduces, but does not eliminate, the threat of future mining. MEMC’s relinquishment of its mineral claims in the area also does not eliminate the threat of future mining. As with the national forest lands in Minnesota, the public interest is best served by the Forest Service “advancing a comprehensive approach” to protecting and preserving Red Lady by applying for a mineral withdrawal of the public lands that will surround the MEMC lands.

Fortunately, President Biden has directed the Forest Service to change course on the withdrawal. The agency should update its analysis of the proposed action’s impacts to reflect the 2-year segregation of the public lands from mineral development upon publication of the application filing and the likely subsequent 20-year withdrawal of those lands from mineral development.

The Forest Service must consider whether Coal Creek’s location within the Crested Butte municipal watershed is an extraordinary circumstance that requires preparation of an EIS or EA.

Under the agency’s NEPA regulations, “a proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and the action is within a category of actions that the agency has previously determined do not normally have a significant effect on the human environment. 36 C.F.R. § 220.6(a). Among the resource conditions that the agency should consider in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are floodplains, wetlands, and municipal watersheds. *Id.* at (b)(1)(ii). If it has determined that a proposed action fits within an exclusion category and it has considered extraordinary circumstances, the agency may rely on the categorical exclusion (CE) to avoid preparation of an EA or an EIS, but only if the responsible official has also determined based on scoping that it is certain that the proposed action will not have a significant effect on the environment. *Id.* at (c).

Here, the Forest Service must consider whether the agency’s loss of oversight over the operation of the MEMC wastewater treatment plant is an extraordinary circumstance, given that the plant is within the Coal Creek watershed, which is part of Crested Butte’s municipal watershed. Unless the agency determines with certainty that the loss of oversight will not have a significant effect, it must forego its preferred reliance on a CE and document those effects in either an EA or an EIS.

The Forest Service should release to the public all documents used to evaluate the Mt. Emmons land exchange prior to issuing a decision on this proposal.

The Forest Service has stated its intention to rely on a CE to comply with NEPA for the proposed land trade but has yet to release documents necessary to show that use of a CE is

warranted. These documents include final versions of the conservation easement(s) and mineral rights extinguishment agreements, as well as evaluations of threatened and endangered species, wetlands and floodplains, and other biological resource assessments.

Failure to make these documents available to the public would frustrate one of the primary aims of the National Environmental Policy Act (NEPA): to inform the public that the agencies considered environmental concerns in their decision-making process.

The public would also benefit from publication of the preliminary land valuations, appraisal instructions, appraisals, and appraisal reviews for this proposal. Such documents are fundamental to the public's ability to evaluate whether the proposed land trade meets the Federal Land Policy and Management Act's (FLPMA) equal value requirement. While such an evaluation is never easy, it is especially complex for this proposal, given the significant effect that conservation easements, mineral rights extinguishment, and mine contamination may have on determining land values.

To justify its use of the proposed CE the agency must make these documents available for public review before it publishes its decision regarding the proposal

This should not be the only opportunity to comment on this proposal.

Although the scoping letter states that the current comment period will be the only opportunity to provide written comments, the Forest Service should reconsider its position and offer the public an additional opportunity to comment on the proposed action after all documents that the agency will consider in reaching a decision are released in their unsigned final form. Providing the public another opportunity to comment would demonstrate commitment to transparency and enhance public trust in the Forest Service's NEPA process.

Thank you for the opportunity to comment on the scope of the environmental analysis for the proposed Mt. Emmons Land Exchange. Please notify me when further documents regarding this proposal are published.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher J. Krupp". The signature is fluid and cursive, with the first name "Christopher" and last name "Krupp" clearly distinguishable.

Chris Krupp, Public Lands Attorney
WildEarth Guardians