



October 14, 2022
Chad Stewart, Forest Supervisor
GMUG National Forest
2250 Highway 50
Delta, CO 81416
Submitted via email

Re: Mt. Emmons Land Exchange #61798

Dear Forest Supervisor Stewart:

High Country Conservation Advocates (HCCA) was established in 1977 with a mission to eliminate the threat of mining on Mt. Emmons. Over the past four and a half decades our mission has expanded to protect the water resources and public lands of the Upper Gunnison basin. Protecting our watershed from the threat of mining on Mt. Emmons remains integral to our mission. The proposed Mt. Emmons Land Exchange, when tied to the conservation easements and mineral extinguishment agreements, will help our community accomplish this objective. As such, we support this land exchange proposal, and provide the comments below to assure that the exchange is implemented in a manner that is in the best interest of the public, protects environmental and public lands resources, and meets applicable federal regulations. HCCA incorporates its previous comments to the U.S. Forest Service on the exchange and related matters.

To that end, we offer comments on five primary areas of the proposed exchange:

- I. Evaluating public gains and concessions
- II. The segregation and proposed withdrawal of lands surrounding Mt. Emmons
- III. Segregation of lands taken into the public domain
- IV. Need for additional information
- V. Request for additional public engagement opportunities



I. Evaluating potential public gains and concessions from the proposed land exchange

Under the Federal Land Policy and Management Act (FLPMA), the Secretary of Agriculture must demonstrate that the exchange will serve the public interest, specifically the “local people” or local community, in order to execute a land exchange agreement.¹ In this proposal the U.S. Forest Service (“USFS”) will deed 551 acres of federal lands to Mt. Emmons Mining Company (MEMC) in exchange for 625 acres of land from four separate parcels held by MEMC.² Overall, there are significant public benefits from the lands that will be received in the exchange. A number of these benefits are derived from the associated conservation easements and mineral extinguishment agreement. Potential gains and concessions for the public interest from this exchange may include:

- 1) **Potential Gain: The elimination of future mining on Mt. Emmons and protection of the water resources of the Gunnison Valley.** Upon executing the conservation easements and mineral extinguishment agreement tied to the proposed land exchange, mining and development would be prohibited on Mt. Emmons. The USFS repeatedly notes that this exchange is being evaluated in anticipation that conservation easements will be implemented on the federal parcels received in the land exchange as well as on private lands currently held by MEMC surrounding the Keystone Mine water treatment plant. Reference to the expected execution of these easements and the mineral extinguishment agreement can be found throughout the Feasibility Analysis (“FA”) and supporting documents.³ HCCA supports the agency’s position that linking the exchange to the enactment of the conservation easements makes the exchange in the public interest.

¹ See FLPMA §206 §1716 (a): “A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System... *where the Secretary concerned determines that the public interest will be well served by making that exchange...* Provided, That when considering public interest the Secretary concerned shall give full consideration to ... the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife..”

² Page 5, Feasibility Analysis. Mt. Emmons Land Exchange Proposal. Grand Mesa, Uncompahgre, and Gunnison National Forests and Rio Grande National Forest. Gunnison and Saguache Counties, Colorado. 2022. Retrieved from <https://www.fs.usda.gov/sopa/components/reports/sopa-110204-2022-10.pdf> on 10/4/2022. Hereinafter referred to as “FA”.

³ FA Exhibit E 1. Signed Proposed Voluntary Conservation Easement and Mineral Extinguishment. Letter from Forest Supervisor Chad Stewart to Francis McAllister, Vice President of Freeport McMoRan. August 30th, 2022.



For example, in an August 30, 2022 letter to Freeport McMoRan, GMUG Forest Supervisor Chad Stewart summarizes the role that the conservation easements play in the USFS analysis, noting that:

The Non-Federal Party has agreed to voluntarily place a conservation easement on the Federal Parcels upon their acquisition by the Non-Federal Party. The Non-Federal Party has indicated that this conservation easement will be executed by the Non-Federal Party and the Crested Butte Land Trust and placed into escrow with instructions to be recorded with the Gunnison County Clerk and Recorder upon closing of the land exchange. Because it is a foreseeable future condition, the Forest Service authorized officer may consider the conditions resulting from the proposed conservation easement to support the use of 36 CFR 220.6(d)(7) in analyzing the land exchange.⁴

The USFS also correctly notes that support for this land exchange from local stakeholders is dependent on the successful execution of the conservation easements and mineral extinguishment agreement prohibiting mining. It is critical to note that this exchange would not be in the public interest without these protections.⁵ Without these protections the exchange could facilitate the development of a large-scale mining operation and allow for new uses of the exchanged lands, including for residential development and the FA would be fundamentally different. Without the integration of both of these protections the exchange would not be supported by HCCA.

The USFS should further tie the execution of the conservation easements and mineral extinguishment agreement to the land exchange because they are integral to the analysis of the public interest and because these protections are necessary to assure similar resource management objectives and practices on the exchanged federal parcels, as required to satisfy the use of the categorical exclusion § 220.6 (d) (7)(ii).⁶ Notably, the mineral extinguishment agreement is not consistently referenced alongside the conservation easements when the USFS discusses protections provided against

⁴ *Id.*

⁵ The USFS correctly recognizes this in the FA on page 46: "Land protections that would be provided by the conservation easement after the land exchange would fulfill key public needs."

⁶ § 220.6 (d) (7)(ii). Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to...Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices.



mining and development. The USFS should incorporate additional references to the mineral extinguishment agreement. While directly related to the conservation easements, this is a separate but critical document.

The USFS has the authority to accomplish this in a range of ways. As noted in 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.” At a minimum the agency can include the conservation easements and mineral extinguishment agreement as part of their rationale in a Decision Memorandum or Record of Decision.

Recommendation (a): The USFS should explicitly incorporate the conservation easements and mineral extinguishment agreement into the rationale in the Decision Memo or Record of Decision and require execution of the conservation easements as a condition of approval.

Recommendation (b): The USFS should refrain from referring to the conservation easements as a “related effort”.⁷ A proper exchange analysis should address this as a required condition as it relies on these easements to evaluate the future use of the parcels exchanged.

Recommendation (c): The USFS should incorporate additional references to the mineral extinguishment agreement where appropriate.

- 2) **Potential Gain: Net gain of wetland acreage.** Completion of the exchange would result in a net acquisition of 42.5 acres of wetlands to the public domain.⁸ Wetlands are critical to the health of our ecosystems and communities and HCCA recognizes this as a significant public benefit.
- 3) **Potential Gain: Recreational benefits from conservation easements.** Recreational benefits would include gaining legal access to the top of Mt. Emmons (via the conservation easements) and the acquisition of a small portion of the Continental Divide National Scenic Trail.

⁷ FA at 51.

⁸ *Id.* at 45.



The Monchego Creek Ranch parcel contains a small portion of the Continental Divide National Scenic Trail.⁹ As noted in the FA, the USFS currently does not have a written easement for the portion of the trail going through this parcel.¹⁰ The acquisition of this private parcel would secure that access.

Additional recreational benefits will be received via the conservation easements. These benefits include legal access for backcountry skiing to the top of Mt. Emmons via the customary skin track and summer access to the summit of Mt. Emmons from the customary summer trail.¹¹ While we are supportive of this substantive gain, much like the benefits from eliminating mining and development addressed above, these recreational benefits will only be actualized if the easements are successfully tied to the exchange.

Recommendation: See recommendations in I(1)(a) & I(1)(b) above.

On page 52 of the FA the USFS explains that “the conservation easement would include a surface recreation stipulation granting the public the right to use certain hiking and ski trails that start at the Kebler Pass Road and proceed to Mount Emmons”. It may be helpful to further clarify where on Kebler Pass Road this access will start from (i.e., from the customary winter trailhead parking).

Recommendation: The USFS should further describe this access as originating from the winter trailhead.

- 4) **Potential Gain: General wildlife habitat acquisition.** Integration of the Three Peaks Ranch parcel into the public lands domain will provide numerous benefits to the public, including the further protection of important big game habitat as mapped by Colorado Parks & Wildlife.¹² In addition, HCCA supports the statement from the Forest Service that “the District Ranger made the determination to manage the parcel to be consistent with the surrounding Whetstone CRA, which included requesting the non-Federal Party to remove most of the improvements including the road within the parcel.”¹³

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² See Attachments A and B.

¹³ FA at 11.



This area should be managed explicitly to conserve roadless values for eventual inclusion within the Whetstone CRA. Furthermore, to maintain these habitat values lands acquired by the USFS should be precluded from future route construction (while existing trails, including the Continental Divide Trail segment could be maintained).

Recommendation: Post-acquisition, the USFS should manage the Three Peaks parcel to be consistent with the surrounding Whetstone CRA and the newly-segregated designation of surrounding lands.

Recommendation: Lands acquired by the USFS should be precluded from future route construction. There should be an exception for existing trails, including the portion of the Continental Divide Trail in Saguache County.

- 5) **Potential Gain: Gunnison Sage-grouse habitat.** Acquisition of the Monchego Ranch parcel in Saguache County will add 143 acres of Gunnison Sage-grouse habitat to the Gunnison National Forest. This gain should also be evaluated to demonstrate the net habitat acquisition for threatened and endangered species. There would also be an exchange of more lower quality Canada Lynx habitat for a lesser quantity of higher quality habitat.

Recommendation: Once complete, the USFS should share on the SOPA website the analysis evaluating the gain of threatened and endangered species habitat and exchange of Canada Lynx habitat.

II. The Conservation Easements, Mineral Extinguishment Agreement and Proposed Withdrawal are Integral to Protecting Public Values

In Section XXIII "Other Related Efforts" the USFS discusses "Three concurrent efforts underway related to the land exchange."¹⁴ These three efforts include:

- Conservation easement
- Mineral withdrawal
- Colorado water court case

¹⁴ *Id.* at 51.



For the reasons discussed above in I(1), we agree that the conservation easement and mineral segregation/withdrawal are appropriately incorporated into the Feasibility Analysis and exchange approval documents as they necessarily ensure that the public interest is served by the exchange, as it is integral to the substance of the exchange being in favor of the public interest as well as integral to satisfying the use of § 220.6 (d) (7)(ii). While the water court case is related, it occurs outside of the proposed exchange footprint and will not necessarily be executed in tangent with the land exchange. To that end, we urge the USFS to analyze the water case outside of consideration of the exchange and FA.

Recommendation: The USFS should not rely on the outcomes of the elements discussed in “Other Related Efforts” to assess the exchange proposal, with the exception of the conservation easements and mineral extinguishment agreement that would be directly tied to the exchanged lands, as well as the mineral segregation/withdrawal.

Regarding these elements, HCCA would like to provide additional clarifications and recommendations.

1) Clarifications on the Mineral Withdrawal and Relinquishment Effort

In Section XXIII “Other Related Efforts”, the USFS touches upon the importance of the conservation easements and eliminating the potential use of surrounding lands for mining purposes. The USFS states:

*“The conservation easement, coupled with other strategies including but not limited to a strategic relinquishment of unpatented mining claims from surrounding NFS land and assignment of strategically-held unpatented mining claims to a third party (e.g., Town of Crested Butte), would also permanently eliminate commercially extractive mining and commercial and residential development on MEMC’s private land and the Federal Parcels” (emphasis added).*¹⁵

¹⁵ FA at 52.



We offer the following comments on the relinquishment concept and federal mineral withdrawal.

a) The Relinquishment of Claims Surrounding the Mt. Emmons Lands

The USFS is correct that MEMC has committed to disposing of their mining and milling claims on lands surrounding Mt. Emmons. MEMC has proposed accomplishing this through a concept that they have identified as “strategic relinquishment”.¹⁶ The USFS appears to present this option as an effective strategy to eliminate the use of these claimed areas for mining purposes. Yet the potential for a strategic relinquishment of MEMC’s claims has not yet been fully evaluated and protection of the lands may likely be effectuated by the segregation/proposed withdrawal of these lands.

b) Administrative Mineral Withdrawal

On pages 52-53 of the FA MEMC asserts that potential future actions regarding a withdrawal are related to the exchange process and notes that the withdrawal is another element that will secure the intent of the land exchange for all parties. However, later on page 53 of the FA the USFS appears to contradict this analysis and provides conclusory statements about the necessity of a mineral withdrawal as well as about the willingness of the agencies to pursue a withdrawal.¹⁷

In light of President Biden’s announcement and accompanying support for the segregation and proposed withdrawal of these lands by the Department of Agriculture and Interior Department, mention of agency opposition to segregation/withdrawal is no longer accurate. The decisions approving the exchange should recognize the segregation and likely withdrawal of lands surrounding Mt. Emmons.

¹⁶ *Id.* at 53.

¹⁷ *Id.*



The USFS also mischaracterizes support for this approach. Due in part to the importance of a withdrawal to end mining on Mt. Emmons, the segregation/proposed withdrawal has broad support from local governments, local stakeholders, and a number of Colorado representatives. Recently, a number of Colorado representatives reached out to President Biden to request an executive withdrawal of the lands surrounding Mt. Emmons as part of the Thompson Divide Mineral Withdrawal. These representatives included Colorado Senator Bennet, U.S. Senator John Hickenlooper, Colorado Governor Jared Polis, and Colorado U.S. Representative Joe Neguse.¹⁸

Recommendation: The decisions approving the exchange should recognize the segregation and likely withdrawal of lands surrounding Mt. Emmons.

Recommendation: HCCA supports the segregation and proposed withdrawal of the lands as designated by the agencies.

2) Conditional water rights

The USFS summary of MEMC's conditional water rights is incomplete. If the USFS intends to keep this analysis in the FA, HCCA recommends adding additional context, including the following:

- On page 53 of the FA there is no mention of the water rights in the Slate River that are part of the conditional water rights decree. In their most recent diligence filing MEMC proposed maintaining rights to 20 cfs of direct flow water rights to the Slate River (in addition to the rights described in the draft FA).¹⁹
- Coal Creek Watershed Coalition and Western Resource Advocates are also Opposers in the above-noted diligence case that share concerns about the final amount of water necessary for reclamation and restricted only to those uses.

¹⁸ See LaConte, John. Letter to Biden from Bennet, Hickenlooper, Polis and Neguse urges 'Camp Hale-Continental Divide National Monument' creation. Vail Daily. August 26, 2022. Retrieved from <https://www.steamboatpilot.com/news/letter-to-biden-from-bennet-hickenlooper-polis-and-neguse-urges-camp-hale-continental-divide-national-monument-creation>.

¹⁹ Attachment C.



- The water rights are decreed for the mining and milling of molybdenum at the Mt. Emmons mine site. The Opposers are seeking a narrower definition of how those rights can be used as well as a significant reduction in the total water amount to restrict that amount to reclamation and remediation purposes. MEMC and the Opposers are currently engaging in settlement negotiations to resolve these issues.

III. Lands Accepted into the Federal Lands Should be Immediately Segregated

Under FLPMA, lands accepted into the public domain are automatically segregated from mineral exploration for a period of 90 days.²⁰ Yet after that, these lands are open to claiming under the 1872 Mining Law. We encourage the USFS to request that the Interior Department segregate the federally-acquired lands, and propose a longer withdrawal under FLPMA – to match what the agencies have done this week on the other federal lands in the area.

This is particularly important for the Three Peaks Ranch. Due to the recent segregation/proposed withdrawal, the Three Peaks Ranch lands, if not segregated/withdrawn beyond the initial 90 days, would be a “donut hole” of lands open for claiming under the Mining Law. This would defeat the goals of the exchange and the recent segregation and unnecessarily complicate agency management of the area.

IV. Additional Information is Necessary to Evaluate the Exchange Proposal

HCCA has additional comments and recommendations to assure that the land exchange is executed with adequate process and a full evaluation of assets removed from the public domain.

²⁰ §1716. FLPMA §206 (i)(2) Addresses the segregation of lands taken into the public sphere from appropriation under mining and public land laws and states:

“All non-Federal lands which are acquired by the United States through exchange pursuant to this Act or pursuant to other law applicable to lands managed by the Secretary of Agriculture shall be automatically segregated from appropriation under the public land law, including the mining laws, for ninety days after acceptance of title by the United States. Such segregation shall be subject to valid existing rights as of the date of such acceptance of title. At the end of such ninety day period, such segregation shall end and such lands shall be open to operation of the public land laws and to entry, location, and patent under the mining laws except to the extent otherwise provided by this Act or other applicable law, or appropriate actions pursuant thereto.” (Pub. L. 94-579, title II, §206, Oct. 21, 1976, 90 Stat. 2756; Pub. L. 100-409, §3, 9, Aug. 20, 1988, 102 Stat. 1087, 1092.)



A. Potential loss of recreational access on federal parcels

While it appears that this exchange will result in substantial recreational benefit overall (dependent on the execution of the conservation easements), there is still a small loss of access on the federal parcels that MEMC would be receiving. The restricted access areas have been carefully designed to protect public health by preventing access in areas that have tailings infrastructure and where heavy equipment (including plows) operate. However, this does result in a small loss of some backcountry skiing terrain near the upper part of the parcel (the conservation easements would provide continued use of the uphill skin track and provide legal access to Red Lady Bowl).

The FA describes the conservation easement as allowing “backcountry skiing access and other non-motorized activities via the proposed conservation easement”.²¹ As explained above, permissible recreational access will actually be more nuanced than this and will not extend to all of the areas to be exchanged. The USFS should identify the areas where recreational access will be eliminated to allow the public to more fully evaluate the tradeoff. Additionally, the USFS must condition the exchange on the completion of the conservation easements to accomplish the conditions for recreational access described in the FA.

Recommendation: To protect recreational access discussed in the FA we refer the USFS to recommendations in I(1)(a) & I(1)(b).

B. Valuation of Exchange Lands

Under FLPMA the lands exchanged must be of equal value.²² The value of lands to be exchanged is determined through an appraisal process.²³ In order to make this determination, the USFS must rely on unbiased appraisals evaluating the value of the lands received as well as the value of the lands exchanged away. The appraisal here is anticipated to be completed by November of 2022.²⁴ Once this assessment is completed, we encourage the USFS to provide transparency of the values of the exchanged lands.

²¹ FA at 46.

²² §1716. FLPMA §206 (h): “The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership.” Federal Land Policy and Management Act 43 U.S.C. § 1716 (b).

²³ §1716 (d)

²⁴ ATI at 14.



Recommendation: The USFS should provide the public with an opportunity to review the appraisal valuation numbers prior to the issuance of the Record of Decision or Decision Memo.

C. Water Rights Analysis of Exchange Parcels

In the Implementation Schedule (Exhibit C), completion of the Water Rights Analysis was targeted for 8/2021. However, it appears that the water rights may require additional analysis.

In the FA and in the associated Water Rights Analysis Report the USFS has provided additional information on the water rights associated with the non-federal parcels.²⁵ Generally, this analysis adequately addresses the presence of water rights associated with these properties. However, the explanation of the Three Peaks Ranch water rights merits additional discussion.

There are two irrigation ditches with water rights associated with the Three Peaks Ranch. These rights amount to 5.5 cfs total and are decreed for irrigation purposes on that parcel. As described in the FA, the USFS is not currently seeking to acquire these rights.²⁶ The Water Rights Analysis associated with the Three Peaks Ranch parcel appears cursory and does not fully evaluate a potential change in the use of those rights if not acquired by the USFS. To that end, HCCA has the following questions:

- How has the USFS evaluated whether or not to acquire the Three Peaks Ranch water rights? Please provide an explanation of the evaluation of whether these rights could be acquired and used for the public benefit.
- If the USFS does not accept those water rights, what use will they be applied to?

Recommendation: The USFS should provide additional discussion of what will happen with the Three Peaks Ranch water rights once the exchange process is complete.

²⁵ FA at 43; FA Exhibit 7.

²⁶ *Id.* at 43.



D. Water Quality Protections: Discharge & Stormwater Permits

In the FA the USFS discusses the means of oversight that the state of Colorado will maintain over the mine water treatment plant operated by MEMC.²⁷ The Colorado Discharge Permit System Permit No. CO-0035394 is correctly described as an administrative renewal. This permit has not been updated since 2008 and was placed on administrative renewal in 2013.²⁸ Similarly, MEMC's Stormwater Permit is on administrative renewal.²⁹ The Colorado Department of Health and the Environment (CDPHE) is Colorado's agency in charge of the renewal of both of these permits. It is important to note that both of these permits are substantially dated.

Recommendation: The USFS should encourage CDPHE to update permits.

V. The United States Forest Service Should Provide an Opportunity for Public Engagement Once Additional Information is Available

Typically, a federal land exchange process is evaluated over a number of years. The USFS is currently evaluating whether to pursue the Mt. Emmons Land Exchange via a categorical exclusion. Here, the incorporation of the conservation easements and mineral extinguishment agreement as a requirement of the land exchange may render this particular exchange as an appropriate use of § 220.6 (d) (7)(ii) as these instruments would ensure that these lands maintain similar resource management objectives and practices.

To date, the USFS has provided significant opportunities for public engagement and has been forthcoming with sharing information publicly about the proposed exchange. We encourage the USFS to continue this transparency as additional analysis is completed. Specifically, as additional analysis is completed the USFS should provide these documents for public review on the SOPA website and the public should be notified. These documents should include things such as the draft biological assessment and USFWS consultation documents, the draft cultural resources assessment (subject to redaction of sensitive cultural information), and documentation of the final assessment values and how those values were arrived at.

²⁷ *Id.* at 16.

²⁸ *Id.*

²⁹ CDPHE Water Quality Control Division Stormwater Permit Certification No. COR-040284 is also on administrative renewal. See *Id.* at 16.



We also encourage an additional opportunity for public engagement once additional analysis is available and prior to any final Decision Memorandum or Record of Decision. As recognized in the ATI, “all documents pertaining to both Federal and non-Federal lands necessary for the evaluation, processing and consummation of a land adjustment transaction... are subject to public availability pursuant to the Freedom of Information Act (5 U.S.C. 522)”.³⁰ Often, the USFS requires that the public submit FOIA requests to obtain the documents necessary to evaluate these proposals, which can be a lengthy process.

The USFS has started off on the right foot by providing initial FA documents and the ATI on the SOPA website prior to initiation of the scoping period. Throughout the scoping period the USFS has provided additional documents helpful to analyze the exchange proposal. Providing access on the SOPA website for public review will provide a more transparent exchange process. The USFS should post these documents on the SOPA website as they are made available.

By offering an informal opportunity for public engagement prior to a final Record of Decision or Decision Memo the USFS would provide an opportunity for feedback on any new analysis. This could be an informal process or listening session where stakeholders weigh-in on the substance of additional assessment.

Recommendation: The USFS should provide additional assessment documents on the SOPA website for public review.

Recommendation: The USFS should provide a meaningful opportunity for public engagement once additional assessment documents have been developed and before the Decision Memo is finalized.

VI. Support for the Acquisition of all Non-Federal Parcels

In the ATI the parties agree that, in the instance that the value of the listed Non-Federal parcels exceeds the value of the Federal parcels, the USFS will make a cash equalization payment to execute the agreement.³¹ These parcels have important attributes that render them valuable acquisitions for the public lands. HCCA supports the acquisition of all four parcels even if additional payment is necessary.

³⁰ ATI at 3.

³¹ *Id.* at 19.



VII. Conclusion

HCCA supports this proposal on the condition that the conservation easements and mineral extinguishment agreements are executed in tangent with the exchange. The proposal as a whole provides numerous public benefits and, when executed with the associated prohibitions against mining activities, it will provide a net benefit to the public. Critically, without the prohibitions against mining our analysis would be dramatically different, as this exchange could open up the exchanged lands to mining and development without USFS oversight.

To fully execute the desired land management regime on the exchanged parcels we support the recent segregation/proposed withdrawal and urge the USFS to request an additional administrative mineral withdrawal of the lands to be acquired, in particular the Three Peaks Ranch parcel. This concept has broad support from the local community, government entities, the mining company that holds the claims within the proposed withdrawal area, as well as from Colorado's elected representatives.

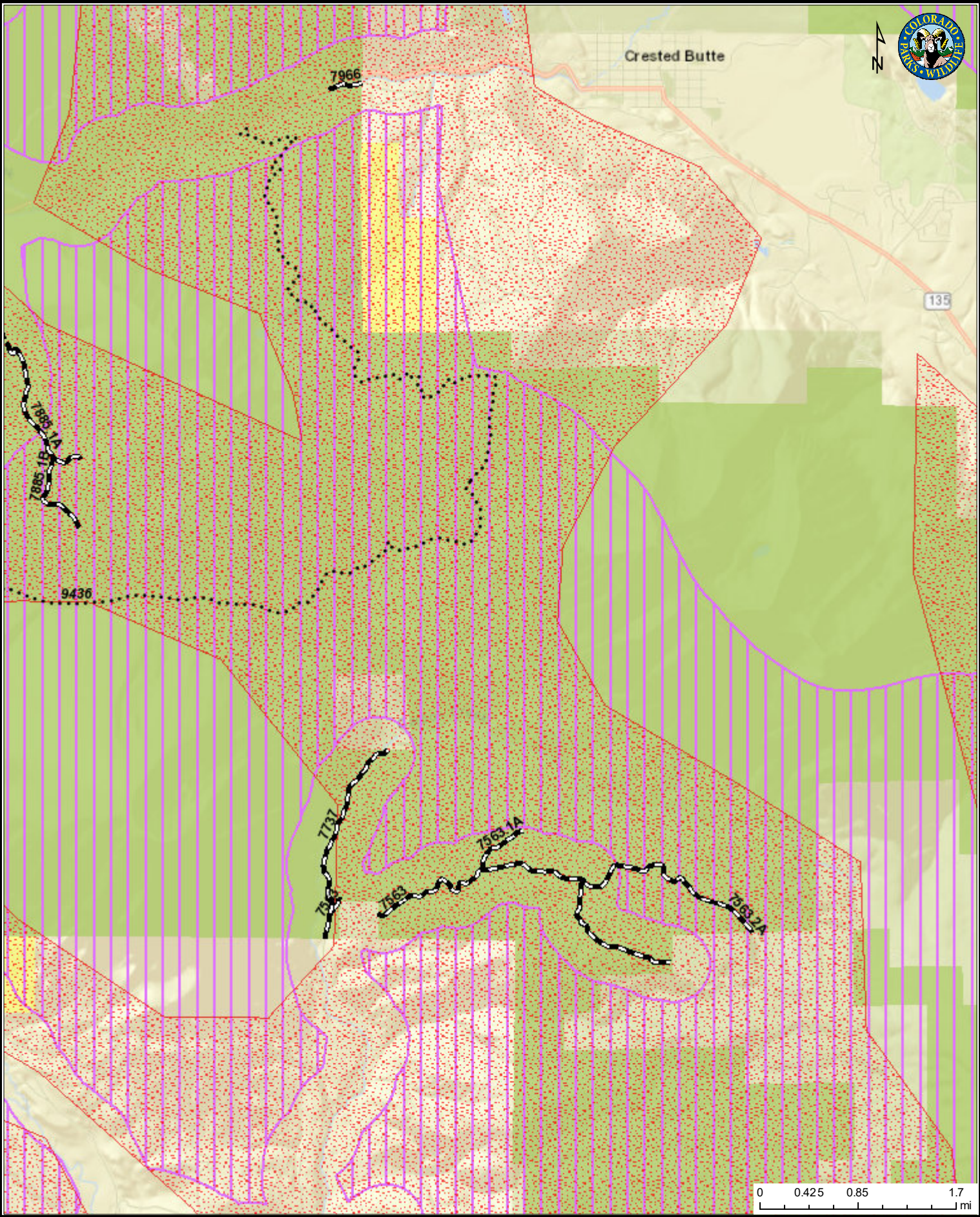
Thank you for your consideration,

A handwritten signature in black ink, reading "Julie Nania". The signature is written in a cursive, flowing style.

Julie Nania
High Country Conservation Advocates
Red Lady and Water Program Director

Elk Migration & Summer Concentration

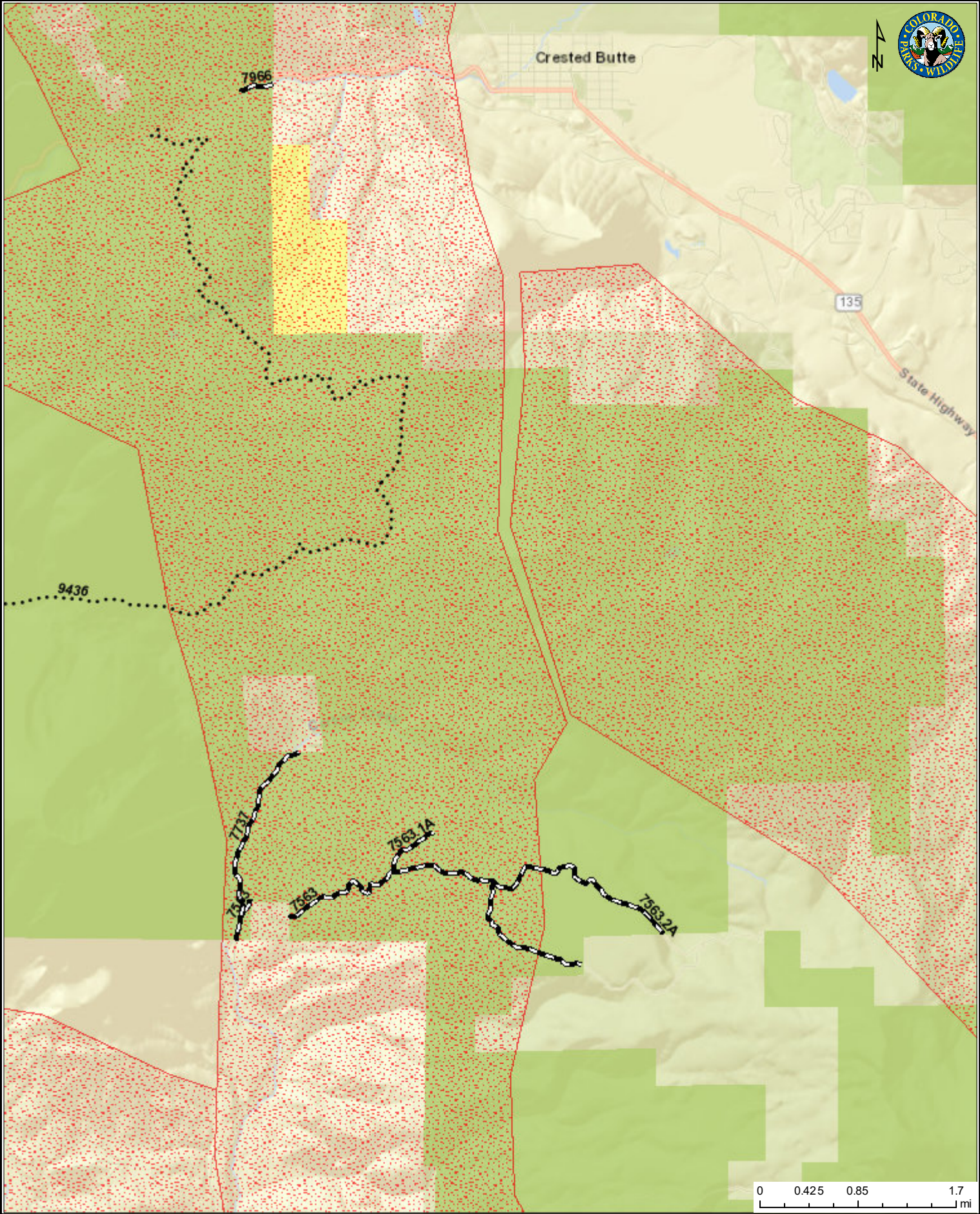
1:68,148 Colorado Hunting Atlas
Map created: September 19, 2022



This map was generated by the Colorado Hunting Atlas (<https://ndismaps.nrel.colostate.edu/HuntingAtlas>). Information depicted is for reference purposes only and is compiled from the best available sources. Reasonable efforts have been made to ensure accuracy. The Colorado Parks and Wildlife is not responsible for damages that may arise from the use of this map. Mapped property boundaries may or may not reflect actual legal holdings. It is the hunter's responsibility to know where private property exists. Colorado law does NOT require landowners to fence or mark property boundaries. For more detailed or missing information, please contact the Colorado Parks and Wildlife at (303)297-1192 (M-F 8am-5pm MST).

Mule Deer Migration Corridor Map

1:68,148 Colorado Hunting Atlas
Map created: September 19, 2022



This map was generated by the Colorado Hunting Atlas (<https://ndismaps.nrel.colostate.edu/HuntingAtlas>). Information depicted is for reference purposes only and is compiled from the best available sources. Reasonable efforts have been made to ensure accuracy. The Colorado Parks and Wildlife is not responsible for damages that may arise from the use of this map. Mapped property boundaries may or may not reflect actual legal holdings. It is the hunter's responsibility to know where private property exists. Colorado law does NOT require landowners to fence or mark property boundaries. For more detailed or missing information, please contact the Colorado Parks and Wildlife at (303)297-1192 (M-F 8am-5pm MST).

DISTRICT COURT, WATER DIVISION 4, STATE OF COLORADO Montrose County Justice Center 1200 N. Grande Ave., Bin A Montrose, Colorado 81401-3146 Telephone: (970) 252-4336	
CONCERNING THE APPLICATION FOR MT. EMMONS MINING COMPANY, a Delaware corporation and a subsidiary of Freeport McMoRan, Inc. IN GUNNISON COUNTY	
Attorneys for Applicant: Brian M. Nazarenus, #16984 Sheela S. Stack, #32768 NAZARENUS STACK & WOMBACHER LLC 5299 DTC Blvd., Suite 610 Greenwood Village, Colorado 80111 Telephone: (720) 647-5661 E-mail: bnazarenus@nswlaw.com sstack@nswlaw.com	▲ COURT USE ONLY ▲ Case No. 21CW_____ (08CW81, 96CW311)
APPLICATION FOR FINDING OF REASONABLE DILIGENCE	

1. Name, Address, and Telephone Number of Applicant

Mt. Emmons Mining Company
c/o Francis McAllister, V.P. Liability Management and Land & Water
Freeport McMoRan
333 North Central Avenue
Phoenix, AZ 85004
Telephone: (602) 366-8100

Please direct all correspondence or inquiries regarding this matter to counsel for Applicant:

Brian M. Nazarenus, Esq.
Sheela S. Stack, Esq.
NAZARENUS STACK & WOMBACHER
8301 E. Prentice Avenue, Suite 110
Greenwood Village, Colorado 80111
Telephone: (720) 647-5661

2. Description of Decreed Conditional Water Rights

2.1. Slate River Direct Flow Right

2.1.1. Name of Structure: Slate River Intake

2.1.2. Original and Subsequent Decrees:

2.1.2.1. The Slate River Direct Flow Right was originally decreed in Case No. 96CW311 on July 25, 2002 in the District Court in and for Water Division No. 4 (“96CW311 Decree”).

2.1.2.2. The Slate River Direct Flow Right was continued as conditional in Case No. 08CW81 on April 16, 2015 in the District Court in and for Water Division No. 4 (“08CW81 Decree”).

2.1.3. Legal Description of Structure: The Slate River Intake will divert at a point on the south bank of the Slate River from which the West quarter corner of Section 20, Township 13 South, Range 86 West of the 6th P.M., bears South 88° 54’ 52” West, distance of 2,666.55 feet, in Gunnison County, Colorado.

2.1.4. Source of Water: Slate River, a tributary of the East River

2.1.5. Appropriation Date: November 11, 1996

2.1.6. Amount: The 96CW311 and 08CW81 Decrees granted and continued as conditional the Slate River Direct Flow Right in the amount of 30 cfs. By this application and in accordance with paragraph 6.2.6 of the 96CW311 Decree, Applicant has re-evaluated the flow rate decreed for the Slate River Direct Flow Right, and has determined that only 20 cfs of the water right is necessary for Applicant’s beneficial use. Therefore, this application seeks to abandon 10 cfs of the Slate River Direct Flow Right and continue, as conditional, 20 cfs for the beneficial uses described in paragraph 3.6., below.

2.1.7. Use of Water: Use and reuse for all industrial purposes associated with mining and milling molybdenum at the Mount Emmons molybdenum property, including without limitation: mining, grinding, and processing of ore; transportation of tailings; evaporation replacement; cooling and dust suppression; fire suppression; and domestic use and lawn and park irrigation at mine and mill facilities.

2.2. Carbon Creek Direct Flow Right

2.2.1. Name of Structure: Carbon Creek Intake

2.2.2. Original and Subsequent Decrees:

2.2.2.1. The Carbon Creek Direct Flow Right was originally decreed in Case No. 96CW311 on July 25, 2002 in the District Court in and for Water Division No. 4.

2.2.2.2. The Carbon Creek Direct Flow Right was continued as conditional in Case No. 08CW81 on April 16, 2015 in the District Court in and for Water Division No. 4.

2.2.3. Legal Description of Structure: The Carbon Creek Intake will divert at a point on Carbon Creek from which the Southwest corner of Section 28, Township 14 South, Range 86 West of the 6th P.M., bears South 51° 56' 38" West, a distance of 3,617.89 feet, in Gunnison County, Colorado.

2.2.4. Source of Water: Carbon Creek, a tributary of Ohio River

2.2.5. Appropriation Date: November 11, 1996

2.2.6. Amount: 10 cfs, conditional

2.2.7. Use of Water: Use and reuse for all industrial purposes associated with mining and milling molybdenum at the Mount Emmons molybdenum property, including without limitation: mining, grinding, and processing of ore; transportation of tailings; evaporation replacement; cooling and dust suppression; fire suppression; and domestic use and lawn and park irrigation at mine and mill facilities.

2.3. Carbon Creek Reservoir Storage Right

2.3.1. Name of Structure: Carbon Creek Reservoir

2.3.2. Original and Subsequent Decrees:

2.3.2.1. The Carbon Creek Reservoir Storage Right was originally decreed in Case No. 96CW311 on July 25, 2002 in the District Court in and for Water Division No. 4.

2.3.2.2. The Carbon Creek Reservoir Storage Right was continued as conditional in Case No. 08CW81 on April 16, 2015 in the District Court in and for Water Division No. 4.

2.3.3. Legal Description of Structure: Carbon Creek Reservoir will be an on-stream reservoir located on Carbon Creek. The location of the dam will be a point on the south abutment of the dam axis from which the Southwest corner of Section 28, Township 14 South, Range 86 West of the 6th P.M., bears South 54° West, a distance of 3,300 feet, in Gunnison County, Colorado. Total capacity of Carbon Creek Reservoir will be 1,000 acre-feet. The dam will be approximately 115 feet high. The anticipated length of the dam will be 990 feet.

2.3.4. Source of Water: Carbon Creek, a tributary of the Ohio River; and the Slate River, a tributary of the East River.

2.3.5. Appropriation Date: November 11, 1996

2.3.6. Amount: 1,000 acre-feet, conditional

2.3.7. Use of Water: Use and reuse for all industrial purposes associated with mining and milling molybdenum at the Mount Emmons molybdenum property, including without limitation: mining, grinding, and processing of ore; transportation of tailings; evaporation replacement; cooling and dust suppression; fire suppression; and domestic use and lawn and park irrigation at mine and mill facilities.

2.4. Mill Water Reservoir Storage Right

2.4.1. Name of Structure: Mill Water Reservoir

2.4.2. Original and Subsequent Decrees:

2.4.2.1. The Mill Water Reservoir Storage Right was originally decreed in Case No. 96CW311 on July 25, 2002 in the District Court in and for Water Division No. 4.

2.4.2.2. The Mill Water Reservoir Storage Right was continued as conditional in Case No. 08CW81 on April 16, 2015 in the District Court in and for Water Division No. 4.

2.4.3. Legal Description of Structure: Mill Water Reservoir will be an on-stream reservoir located on an unnamed tributary of Ohio Creek. The location of the dam will be a point

on the south abutment of the dam axis from which the Southwest corner of Section 19, Township 14 South, Range 86 West of the 6th P.M., bears South 81° East, a distance of 3,856 feet, in Gunnison County, Colorado. The total capacity of Mill Water Reservoir will be 1,000 acre-feet. The dam will be approximately 185 feet high. The anticipated length of the dam will be 710 feet.

2.4.4. Source of Water: An unnamed tributary of Ohio Creek, and the Slate River, a tributary of the East River.

2.4.5. Appropriation Date: November 11, 1996

2.4.6. Amount: 1,000 acre-feet, conditional

2.4.7. Alternate Point of Storage: Elk Creek Reservoir is an alternate place of storage for 600 acre-feet of the Mill Water Storage Right; provided, however, that the source of any Mill Water Reservoir water stored in Elk Creek Reservoir shall be limited to diversions from the Slate River Intake.

2.4.8. Use of Water: Use and reuse for all industrial purposes associated with mining and milling molybdenum at the Mount Emmons molybdenum property, including without limitation: mining, grinding, and processing of ore; transportation of tailings; evaporation replacement; cooling and dust suppression; fire suppression; and domestic use and lawn and park irrigation at mine and mill facilities.

2.5. Elk Creek Reservoir Storage Right

2.5.1. Name of Structure: Elk Creek Reservoir

2.5.2. Original and Subsequent Decrees:

2.5.2.1. The Elk Creek Reservoir Storage Right was originally decreed in Case No. 96CW311 on July 25, 2002 in the District Court in and for Water Division No. 4.

2.5.2.2. The Elk Creek Reservoir Storage Right was continued as conditional in Case No. 08CW81 on April 16, 2015 in the District Court in and for Water Division No. 4.

2.5.3. Legal Description of Structure: Elk Creek Reservoir will be an on-stream reservoir located on Elk Creek. The location of the dam will be a point on the north abutment of the dam axis from which the Southwest corner of Section 6, Township 14 South, Range 86 West of the 6th P.M., bears South 77° East, a distance of 2,720 feet, in Gunnison County, Colorado. The total capacity of Elk Creek Reservoir will be 1,600 acre-feet; provided, however, that the volume of water diverted into storage in Elk Creek Reservoir from the natural flow of Elk Creek shall be

limited to a maximum of 1,000 acre-feet. The dam will be approximately 220 feet high. The anticipated length of the dam will be 960 feet.

2.5.4. Source of Water: Elk Creek, a tributary of Coal Creek; Carbon Creek, a tributary of Ohio Creek; and the Slate River, a tributary of the East River

2.5.5. Appropriation Date: November 11, 1996

2.5.6. Amount: 1,000 acre-feet, conditional

2.5.7. Use of Water: Use and reuse for all industrial purposes associated with mining and milling molybdenum at the Mount Emmons molybdenum property, including without limitation: the mining, grinding, and processing of ore; the transportation of tailings; evaporation replacement; cooling and dust suppression; fire suppression; and domestic use and lawn and park irrigation at mine and mill facilities.

3. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:

3.1. On February 12, 2016, Applicant acquired from the previous owner, U.S. Energy (“USE”), all of USE’s properties and interests related to the Mt. Emmons mine site, including the mine, water rights, and water treatment plant.

3.2. The Applicant spent the rest of 2016 analyzing the mine site to determine what is necessary to keep the water quality in good condition and make the operation run more efficiently.

3.3. In 2018, the Applicant established various levels of drainage systems on the property to better mitigate the water, and retained Trout Unlimited and the Colorado Division of Reclamation Mining and Safety to design and oversee implementation of onsite reclamation work, including reclamation of two waste rock areas.

3.4. The majority of 2019 was spent evaluating how to overall best improve the wastewater treatment plant for the long term, while Applicant also finished ditch and road improvements along with some slope improvements and additional waste rock reclamation. Applicant also, conducted repairs to the re-vegetation work done in 2018, and projects to improve stormwater management.

3.5. In 2020 and 2021, the Applicant continued with road, slope, and channel improvements, waste rock reclamation, as well as recontouring tailing dams to improve stormwater management. Applicant also re-evaluated the volume of water necessary for various reclamation scenarios on the property and determined that only 20 cfs of Slate River Direct Flow Right would be necessary for the uses described in paragraph 3.6., below.

3.6. Applicant continues to rely upon and develop the conditional water rights described herein and has no intent to abandon them for industrial purposes associated with water management; water treatment; site operation, maintenance and restoration; and reclamation purposes, including, but not limited to, evaporation replacement; fire suppression; and domestic use and lawn and park irrigation at the former mine and mill location(s).

4. Names and addresses of owners of the land on which the structures are or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use. All water diversion structures, reservoir, and related facilities will be constructed on land owned by the Applicant, as well as on land owned by:

4.1. United States Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

4.2. United States Forest Service, Gunnison National Forest, 2250 Highway 50, Delta, Colorado 81416.

WHEREFORE, Applicant respectfully requests that this Court enter an order finding that reasonable diligence has been exercised in the development of the conditional water rights and that such water rights be continued as conditional in the amounts described in paragraphs 2.1.6, 2.2.6, 2.3.6, 2.4.6, and 2.5.6., above for industrial purposes associated with water management; water treatment; site operation, maintenance and restoration; and reclamation purposes, including, but not limited to, evaporation replacement; fire suppression; and domestic use and lawn and park irrigation at the former mine and mill location(s).

Respectfully submitted this 30th day of April, 2021.

NAZARENUS STACK & WOMBACHER

By: Brian M. Nazarenus, #16984
Sheela S. Stack, #32768

Attorneys for Applicant Mt. Emmons Mining Company

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the 30th day of April, 2021, at Phoenix, Arizona.

Francis McAllister
Printed Name


Signature

The person signing this verification is the Vice President of Liability Management and Land & Water of Freeport-McMoRan, Inc., the parent company of the Mt. Emmons Mining Company.