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Title:

Comments: October 17, 2022

Chad Stewart, Forest Supervisor

GMUG National Forest

2250 Highway 50

Delta, CO 81416

Submitted via email

RE: Mt. Emmons Land Exchange #61798

Dear Mr. Stewart,

Colorado Wild Public Lands (CWPL) is a 501(c)(3) organization dedicated to keeping public lands public and accessible. Our mission is to protect the integrity, size and quality of Colorado's public lands. We welcome this opportunity to comment on the proposed Mt. Emmons Land Exchange and look forward to ongoing engagement with this project as more information becomes available.

The Mt. Emmons exchange is the best proposal CWPL has seen in our 10 years of following land exchanges around Colorado, and we commend the elements of this project that taken together offer substantial public benefits. These include:

- Imposition of an extremely restrictive conservation easement on the lands conveyed into private ownership that will ensure no future mining or development of any kind on those lands,
- Extinguishment of all the proponents' mineral rights underlying the now public exchange parcels, Conveyances to Gunnison County and public access easements to the Forest Service over the proponents' post-exchange acquisitions ensuring permanent access for public infrastructure and multiple recreational amenities,
- Public acquisition of desirable inholdings that will consolidate public holdings, protect important habitat and ensure permanent access for the Colorado and Continental Divide Trail systems,
- Facilitation of upgrades to the dated water treatment facilities on the now federal parcels that will protect water quality in the locally important Coal Creek watershed.

The proponents' willingness to extinguish its mineral interests and to grant conservation and access easements protects the status quo and on-going public enjoyment of all the lands in the exchange. The proposal does not eliminate any existing public access, nor does it allow any future development on the now public lands. It increases access, affords public protections to wildlife habitat and offers incentives for better management of impacts from historic mining operations.

To ensure the public objectives of the land exchange espoused in the current proposal, CWPL urges the Forest Service ("Agency") to undertake any necessary measures to eliminate uncertainty about the future implementation of the purported public benefits. In that spirit, we offer the following comments.

I. THE RECORD OF DECISION (ROD) SHOULD CONDITION THE EXCHANGE ON THE CBLT CONSERVATION EASEMENT AND MINING EXTINGUISHMENT

In the FA, the Agency is relying on implementation of these agreements to support its rationale for processing the exchange using a Categorical Exclusion rather than an EA or an EIS:

"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." [FA at 131]

This reliance suggests that absent these agreements, the exchange would merit a more robust NEPA review. Moreover, the reliance creates a hypothetical condition on which to base the review process that will not exist if the restrictions detailed in these agreements are not implemented, namely that the current uses will never change, therefore a NEPA review that would evaluate the potential future impacts of a change in use of lands in the exchange is not necessary.

The only way to guarantee implementation of these agreements is to condition the exchange on them in the ROD.

CWPL also suggests the agreements should be placed in escrow now. The FA says:

"Upon agreement of the easement language, [it] would be executed by both MECM and CBLT and held in escrow until the land exchange is complete" [FA at 52].

Presumably, the parties have reached agreement on the language of both the Conservation Easement and the Mineral Extinguishment Agreement because the Agency has released both documents for public review. Because the public is evaluating and supporting this exchange based upon the benefits described in the available documents, the documents should go to escrow now to ascertain the benefits which are the underpinning of this public support.

II. CWPL SUPPORTS ADMINISTRATIVE EFFORTS TO REMOVE LANDS IN AND AROUND THE EXCHANGE FROM FUTURE MINING CLAIMS

CWPL detailed support for administrative withdrawal of these lands in our August 31, 2022 comments. In the meantime, President Biden has issued Executive Order [Oct. 12, 2022] that includes the desired permanent withdrawal of these claims on the lands in the exchange. Because a future prohibition on mining is integral to both the substance and the process of this land exchange, CWPL supports the agencies (USFS and BLM) efforts to facilitate this withdrawal.

We support HCCA's position on the relinquishment of unpatented claims on lands surrounding Federal Parcels 1,2 and 3 and agree that the potential downsides of the "strategic relinquishment" strategy described in the FA [at 52] are reason for the Agency to avoid any further consideration of it.

Additionally, for all the reasons described above, the Agency should segregate the now private lands from mineral location for the maximum 5 years to allow for closing of the exchange and agency determination regarding whether future location is suitable given the management objectives of public ownership of these parcels.

III. THE AGENCY MUST DEMONSTRATE TRANSPARENCY, CONTINUE TO ENGAGE THE PUBLIC, AND BE PREPARED TO UNDERTAKE A MORE RIGOROUS NEPA ANALYSIS IF THE RESOURCE EVALUATIONS SHOW IT IS WARRANTED

CWPL's August 31, 2022 comments detail this organization's discomfort with evaluating a land exchange proposal of this complexity and geographical scope through a Categorical Exclusion. We also think that the Agency should have completed the resource evaluations prior to the opening of this comment period so the information therein would be available to the public in their assessment of the proposal. However, we recognize that the likely outcomes of the exchange meet the criteria for using the CE; we also believe this proposal and accompanying public benefits to be in the public interest. CWPL can support the Categorical Exclusion under the following conditions:

1. The Agency must continue to engage the public through full and timely disclosure of all supporting documentation (including all valuation documents) and through additional opportunities for public comment on this documentation prior to the issuance of a Decision Notice (DN) and Record of Decision (ROD).
2. The Agency must commit to undertaking any level of additional NEPA assessment that the supporting documentation indicates is appropriate.

IV. OTHER ISSUES

Water. CWPL continues to have concerns about the disposition of the 5.5 cfs of water rights on non-federal Parcel A. If the Agency is still disinclined to accept those water rights and use them for public benefit, it should

explain in more detail how and why the agency has chosen not to acquire the rights and recommend abandonment.

In our August 31 comments, we requested more information from the agency regarding the post-exchange water quality protections; the Agency has not yet provided that information. At a minimum, we recommend that the Agency recommend that the State review and renew the 2013 and 2016 water quality permits referenced on page 16 of the FA.

Access Easements. Because the access easements have not yet been drafted [FA at 13], the Agency should provide as much specificity as current information allows regarding the access afforded through the recreational easements purported in the FA. This should include details about gps coordinates of start and end points, linear distance between points, descriptions of the areas that will continue to be accessible to skiing, and those that will no longer be, and details regarding allowable uses on those easements. This information would help to inform realistic public expectations about the future use of these amenities.

Other Resource Issues. The exchange would result in a net loss of lynx habitat [FA at 29]. Because the TES consultation has not yet begun, we have no way of knowing details about the quality of the habitat being exchanged. We reiterate that if this consultation raises questions about the future viability of local lynx populations, the Agency should undertake a more rigorous NEPA evaluation process.

Additionally, if the SHPO concurrence suggests it is appropriate, the Conservation Easement should be amended to provide protection for the site eligible for National Historic Preservation Listing on federal Parcel 1[FA at 30].

CWPL recognizes the momentum around this project resulting from the extensive engagement among the proponent, the local community and advocates and the Forest Service. That momentum carried all the way to Washington, DC eliciting support from the President for the steps necessary to ensure the outcomes of this exchange. If the Agency releases all relevant information and continues to engage and assist the public in evaluating that information, our organization will look forward to a Decision that benefits us all.

Sincerely,

Anne Rickenbaugh, Board Member