MT. EMMONS LAND EXCHANGE

Decision Memo

U.S. Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forests

and

Rio Grande National Forest

Gunnison and Saguache Counties, Colorado

Nonfederal Parcel A (Three Peaks Ranch), photo credit Corey Wong
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I. DECISION

As the Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG), I have been delegated the authority to execute land exchange process documents including Agreements to Initiate and Exchange Agreements and to execute decision documents and consummate all exchanges per the Landownership Adjustments Delegation of Authority memo issued to the Forest Supervisors by the Regional Forester on February 20, 2014.

The GMUG is the lead Forest for this multi-Forest land exchange which includes non-Federal parcels on the Rio Grande National Forest that will become National Forest System (NFS) lands.¹

Exclusion Category

This proposal is covered by 36 CFR 220.6(d)(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same.

Per FSH 5409.13 Chapter 30, 33.41: “Land exchanges convey land, interests in land, and the resources associated with them. However, the act of conveyance has no environmental effects. Therefore, the environmental analysis should focus on the future use and management of the lands acquired and conveyed and the effects of the exchange on the lands that adjoin them.”

Description of Decision

My decision is to consummate a land exchange in which the United States will acquire four non-Federal parcels located in Gunnison and Saguache Counties, Colorado, totaling 625.18 acres in exchange for three Federal parcels located in Gunnison County totaling 539.49 acres. The mineral estates of all parcels will be conveyed with the surface estates. There are no water rights conveyed by either party. Mt. Emmons Mining Company (MEMC), a Delaware corporation, is the non-Federal party.

This decision will be implemented through deeds of conveyance that meet the requirements of the Secretary of Agriculture and the Attorney General of the Department of Justice, through which title of the lands will be conveyed concurrently with the closing on a Conservation Easement and Mineral Extinguishment Agreement between MEMC and the Crested Butte Land Trust (CBLT) and the closing on a grant of a parcel of land from MEMC to Gunnison County. The Conservation Easement and Mineral Extinguishment Agreement restrict the future use and management of the Federal parcels to remediation activities and limited public access, preserves and protects conservation values, and prevents future mining. The parcel of land to the County is described in the following section.

Descriptions of the Parcels

The legal descriptions of the Federal and non-Federal parcels are included in Exhibit A and maps are included in Exhibit B.

¹ Per the same memo cited above and a letter of February 29, 2022.
Federal Parcels 1, 2, and 3 are located on Mt. Emmons just three miles west of Crested Butte, Colorado. The historic Keystone Mine, located on patented claims owned by MEMC, operated from the 1880s until the 1970s.

Federal Parcel 1

Most of the surface-related mining infrastructure is on unpatented claims on adjacent National Forest System (NFS) land and within Federal Parcel 1. This infrastructure includes a water treatment plant, five water treatment ponds, six storage buildings, a sewage treatment plant, 23 acres of reclaimed tailings impounded by four dams, water pipelines, electrical lines, and roads, including the mine’s access road.

The water treatment plant treats water from historic mining activities before it is discharged into Coal Creek under a discharge permit issued by the Colorado Water Quality Control Division. The sewage treatment plant is a small package plant that treats sanitary wastewater generated at the site and effluent is discharged to a retention pond.

Federal Parcel 1 is 458.48 acres in size and is located on the southern flank of Mt. Emmons just upslope of Coal Creek. Elevations range between 9,200 and 11,100 feet with steep slopes, no perennial water, and vegetation that includes montane-subalpine grasslands and aspen groves at lower elevations that transition into spruce-fir forests at higher elevations.

Within the parcel are the Kebler Pass Road (County Road 12), Kebler Pass Winter Trailhead, Keystone Mine access road (NFS Road 732), and short segments of the Carbon Trail (NFS Trail 436) and the Wildcat Trail (NFS Road 966). Federal Parcel 1 will be conveyed subject to the County’s FRTA² easement for the Kebler Pass Road (CR 12). Upon conveyance of Federal Parcel 1 to MEMC, a 25-acre parcel will be conveyed and dedicated to Gunnison County as public property and roads under Colorado law. Rights-of-way will be reserved by the United States for administrative use for the Keystone Mine access road (NFS Road 732) and public use for the motorized Carbon Trail (NFS Trail 436). Federal Parcel 1 will be conveyed subject to the FLPMA³ private road easement conveyed to Trappers Crossing, LTD, for NFS Road 966, also known as Wildcat Trail.

Federal Parcel 2

Federal Parcel 2 is 77.98 acres in size and is located on the south-facing slope of Mt. Emmons near the peak and Gunsight Pass. Elevations range between 10,800 and 12,100 feet with steep slopes, a perennial spring, and vegetation that includes dense spruce-fir forests that transition to sparse windblown spruce-fir, montane subalpine grasslands, and scree at the higher elevations.

Within the parcel are the Gunsight Pass Trail (NFS Trail 585) and a short segment of MEMC’s access road (NFS Road 732). A right-of-way for public use will be reserved by the United States for the non-motorized Gunsight Pass Trail (NFS Trail 585).

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² Forest Roads and Trails Act of 1964, P.L. 88-657
Federal Parcel 3

Federal Parcel 3 is 3.03 acres in size and is located on the north-facing slope of Mt. Emmons near the peak. Elevations range between 11,700 and 12,400 feet with steep slopes, no perennial water, and mostly barren of vegetation with scree, cliffs, and rocks. As a fraction of NFS lands lying within overlapping, patented mining claims, there is no road or trail access to this parcel.

Non-Federal Parcel A (Three Peaks Ranch)

Three Peaks Ranch is 160.00 acres in size and is located 20 miles north of Gunnison, Colorado, within Gunnison County and the Gunnison National Forest. Elevations range between 9,200 and 9,700 feet. Carbon Creek and an unnamed tributary, both perennial, cross this parcel. Much of the valley is riparian vegetation and has been mapped as a fen needing field verification. The vegetation transitions from montane-subalpine grasslands to large groves of aspen and mature spruce-fir forests.

Three Peaks Ranch is abutted on three sides by the Whetstone Colorado Roadless Area. A dirt road that leads to a modern cabin is in the middle of the parcel. The road, cabin, and other structures will be removed by MEMC per the requirements established in a removal and rehabilitation plan. A cultural resources survey was conducted for this removal plan and no adverse effects were identified.

Non-Federal Parcel B (Monchego Creek Ranch)

Monchego Creek Ranch is 159.69 acres in size and is located 30 miles west of Saguache, Colorado, within Saguache County and the Gunnison National Forest. Elevations range between 9,400 and 9,600 feet. Monchego Creek, a perennial creek, flows through the center of the parcel. There is a narrow riparian corridor abutted by montane-subalpine grasslands that transition to mixed conifer forests in the higher elevations.

Saguache County Road 17FF bisects the parcel. This segment of county road also serves as the Colorado Trail and Continental Divide National Scenic Trail.

From County Road 17FF and within the parcel there is a road that bisects the eastern half of the parcel and roads that serve private parcels. Segments of these roads further cross NFS lands without authorization.

An easement granted by MEMC to Coleman Ranches Inc. authorizes a buried waterline that serves one of the private parcels. The Monchego Creek Ranch parcel will be acquired by the United States subject to this easement. The waterline further crosses NFS lands without authorization. Consideration by the Forest Service of the unauthorized roads and waterline on NFS lands will be made after the land exchange has been completed.

Non-Federal Parcel C (Sheep Creek Ranch)

Sheep Creek Ranch is 147.50 acres in size and is located 21 miles northwest of Saguache, Colorado, within Saguache County and the Rio Grande National Forest. Elevations range between 9,100 and 9,700 feet. Sheep Creek and its tributary, Spruce Creek, both perennial, flow through the center of the parcel. There is a narrow riparian corridor abutted by montane-subalpine grasslands and ponderosa pine forests to the east and mixed conifer forests to the west.
Sheep Creek Trail (NFS Trail 769) crosses the northwest corner of the parcel. There is an old homestead with a dilapidated cabin and livestock pen, which will remain. There is boundary fencing that will remain until the Forest Service makes further determination.

Non-Federal Parcel D (Spanish Creek Ranch)

Spanish Creek Ranch is 157.99 acres in size and is located 20 miles northwest of Saguache, Colorado, within Saguache County and the Rio Grande National Forest. Elevations range between 9,000 and 9,200 feet. Spanish Creek, a perennial creek, flows through the parcel. There is a narrow riparian corridor abutted by montane-subalpine grasslands and ponderosa pine and mixed conifer forests in the higher elevations.

There is a dilapidated cabin, which will remain. There are two unauthorized roads on NFS lands that enter the parcel and boundary fencing, which will remain until the Forest Service makes further determination.

Cadastral Surveys

The Bureau of Land Management (BLM) completed boundary surveys of the Federal parcels, posted boundary monuments, and finalized two survey plats and field notes. The Forest Surveyor completed surveys of the roads and trails to be reserved and those to be granted to the United States. The survey plats and legal descriptions were used to develop the patent and deeds.

Purpose of Decision

Conveyance of the Federal parcels will facilitate water treatment, land reclamation, and revegetation by MEMC through removal of Forest Service oversight yet continued regulation by the State of Colorado (specifically the Colorado Water Quality Control Division), Gunnison County and the Town of Crested Butte. In addition, NFS lands encumbered by the mining infrastructure, including any hazardous substances, will be conveyed to MEMC, a Potentially Responsible Party⁴, and thereby removing environmental liability held by the United States.

Conveyance of the Federal parcels will allow MEMC to establish a Conservation Easement and Mineral Extinguishment Agreement on its patented land and conveyed Federal parcels to prohibit mining and commercial and residential development and to allow non-motorized recreation in perpetuity.

Conveyance of Federal Parcel 1 will allow MEMC to convey a 25-acre parcel to Gunnison County that will allow it to own the land upon which lies a one-mile segment of County Road 12 (Kebler Pass Road) and to own the Kebler Pass winter trailhead, which it manages for recreation and residential uses.

Acquisition of the four non-Federal parcels and conveyance of the three Federal parcels are consistent with the two Forest Plans (Grand Mesa, Uncompahgre and Gunnison National Forests)⁵

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⁴ Any party which may be liable pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for response costs incurred and to be incurred by the United States.

⁵ While the GMUG NF released a revised Forest Plan and a draft record of decision on August 30, 2023, the decision has not been finalized, thus the current Forest Plan was referenced and considered in this project.
and Rio Grande National Forest) and contribute toward desired conditions as described in Exhibit C.

**Purchase Consideration of the Non-Federal Lands**

Federal purchase of the four non-Federal parcels does not meet a primary purpose of this land exchange: Conveyance of Federal land encumbered in perpetuity with structures and hazardous substances to the Potentially Responsible Party and thereby facilitating long-term remediation of the mine site.

While the acquisition of the non-Federal parcels could be accomplished via purchases under the Land and Water Conservation Fund, the non-Federal party is not willing to sell the land to the Forest Service and the parcels would have to compete with other proposals regionally and nationally for limited funds.

**Use of Deed Restrictions**

Neither scoping nor evaluation of the Federal land by specialists identified any critical National Forest resources in need of protection through deed restrictions. In addition, the use of Federal deed restrictions is not consistent with the Forest Service goal of improving the effectiveness and efficiency of its management because administration of deed restrictions can be complicated, time consuming, and expensive resulting in potential decrease in management efficiency, instead of the intended increase.

This stated, and as noted throughout this Decision Memo, a Conservation Easement and Mineral Extinguishment Agreement between MEMC and the Crested Butte Land Trust, with Gunnison County and the Town of Crested Butte holding certain enforcement rights, will establish restrictions of use by MEMC that will protect resources of value to the community.

**Appraised Values**

Appraisals meeting the requirements of the Uniform Appraisal Standards for Federal Land Acquisitions have been prepared for the Federal and non-Federal parcels. The value of the Federal parcels is $2,490,000. The value of the non-Federal parcels is $1,940,000. A cash payment of $550,000 will be made by MEMC to equalize values, as provided for in Section 206, P.L. 94-579, October 21, 1976, as amended.

**Post-Exchange Oversight**

After the land exchange is completed, the Forest Service will no longer have oversight of MEMC’s operations. The Colorado Department of Public Health & Environment (CDPHE), through a discharge permit for the water treatment plant and a stormwater management permit issued by the Colorado Water Quality Control Division, will continue to regulate and permit MEMC's water treatment plant and stormwater discharges. MEMC will be subject to and required to comply with applicable local regulatory authority established by Gunnison County and the Town of Crested Butte, more specifically the County’s Land Use Resolution and the Town’s watershed protection district regulations.

Also, post-exchange, the Forest Service will no longer have oversight of the Kebler Pass winter trailhead and a segment of County Road 12 (Kebler Pass Road) because they are within the parcel...
to be conveyed to Gunnison County. The County will establish its own management regulations, policies, and procedures of the trailhead and County road.

**Conservation Easement and Mineral Extinguishment Agreement**

MEMC and the Crested Butte Land Trust will enter into a Conservation Easement and Mineral Extinguishment Agreement that covers the Federal parcels subject to this land exchange, as well as MEMC’s patented claims associated with the Keystone Mine. This easement and agreement will take effect upon conveyance of the Federal parcels to the non-Federal party and will run with the land in perpetuity.

The purpose of the Conservation Easement is to protect the conservation values including wildlife habitat, open space, scenic values, and recreation. The Mineral Extinguishment Agreement, to be executed concurrently with the Conservation Easement, will extinguish the right to mine by MEMC in perpetuity (other than the present and future remediation activities). The Conservation Easement will extinguish the right to subdivide and develop by MEMC in perpetuity.

The Conservation Easement protects conservation values but allows the MEMC’s water quality remediation activities to continue subject to 1) Gunnison County Land Use Resolution; and 2) Town of Crested Butte Watershed District Regulations. The Crested Butte Land Trust can enforce the conservation easement and the County and Town are third-party beneficiaries with rights to enforce certain provisions of the Conservation Easement.

MEMC will be required by a binding Exchange Agreement to place the executed Conservation Easement and Mineral Extinguishment Agreement documents in escrow to be recorded with the Gunnison County Clerk & Recorder upon closing of the land exchange.

**Thompson Divide Withdrawal**

Public Land Order 7939 took effect on April 8, 2024, withdrawing approximately 221,898 acres of NFS and BLM land from disposition under the public land laws and operation of the mining, mineral and geothermal leasing laws for a 20-year period, subject to valid existing rights.

Within the Thompson Divide withdrawal area are lands not associated with the land exchange on which MEMC holds over 1200 unpatented mining claims. Upon completion of the land exchange, MEMC will relinquish these claims, which will further reduce community concerns for mining within the area.

Because Three Peaks Ranch lies within the proposed withdrawal area, it will be subject to the withdrawal upon acquisition by the Federal Government.

**Colorado Water Court Case**

The Colorado Water Division 4 water court granted conditional water rights for mining uses to the Mount Emmons Mining Company, an affiliate of Climax Molybdenum Company, on July 25, 2002, in Case No. 96CW0311. The conditional rights of interest are located on the Gunnison National Forest proximate to the Federal parcels, Three Peaks Ranch, and on BLM land at Slate River, northwest of Crested Butte.

The United States and others have filed statements of opposition to MEMC’s application requesting that the court continue the water rights for uses associated with mining, milling, and related
industrial purposes. The parties are presently engaged in settlement discussions, which could be concluded before the land exchange is closed.

The point of use for some of the water rights would occur on the Federal parcels though with the establishment of the Conservation Easement and Mineral Extinguishment Agreement uses for mining and milling at the Federal parcels would be precluded.

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Federal Parcel 1

The current uses of Federal Parcel 1 include:

- Kebler Pass Road for transportation purposes
- Kebler Pass Winter Trailhead for parking and to begin and end recreational activities such as snowmobiling and backcountry skiing; parking includes some conditional overnight parking permitted by the County under its regulations for primarily those with residences further up Kebler Pass Road
- Wildcat Trail for motorized road access to the Trappers Crossing subdivision
- Carbon Trail as a motorized single-track trail
- Use by MEMC of their unpatented mining claims for water treatment, tailing storage, mining reclamation, surface water runoff control, road and ditch maintenance
- For MEMC to divert surface water away from seepage points where it could lead to increased acid mine drainage
- Oversight by the Forest Service of MEMC’s activities
- Access by the Forest Service, State, and contractors to the Standard Mine, which lies to the west of the Keystone Mine

All of these land uses will remain essentially the same post exchange:

- Gunnison County has been managing the Kebler Pass Road for transportation purposes for over 100 years and under a FRTA easement since 1997. The County has been managing the Kebler Pass winter trailhead under a Forest Service special use authorization since 2007. Upon owning the 25-acre portion of Federal Parcel 1, the County plans to continue to manage Country Road 12 and the winter trailhead in a similar manner at this time; future Boards of County Commissioners may decide to change management practices to address certain needs and conditions.
- The Wildcat Trail use by Trappers Crossing, LTD will continue via the easement it holds with the Forest Service. Because a segment will lie within the County parcel, oversight of this easement segment will be provided by Gunnison County.
- The Carbon Trail motorized use will continue via a right-of-way reserved by the Forest Service.
• Access for backcountry skiing and other non-motorized recreational opportunities will be provided by the Conservation Easement.

• MEMC will continue to be subject to a State permit requirement to operate the water treatment plant. In addition, MEMC will continue to store tailings, and conduct reclamation, runoff control, and road and ditch maintenance subject to Gunnison County and Town of Crested Butte regulations.

• MEMC will continue its efforts to divert surface water subject to applicable State and local regulations.

• Access to the Standard Mine will continue and be perfected via a right-of-way reserved by the Forest Service and an easement granted by MEMC to the Forest Service.

Federal Parcel 2
The current uses of Federal Parcel 2 include:

• Maintenance of a segment of NFS Road 732 by MEMC for access up Mt. Emmons to its private lands

• Diversion of surface water by MEMC away from seepage points where it could lead to increased acid mine drainage

• Gunsight Trail for non-motorized use

• Access for backcountry skiing

All of these land uses will remain essentially the same post exchange:

• MEMC will continue use and maintenance of this road segment, which they will own.

• MEMC will continue its efforts to divert surface water.

• Gunsight Trail non-motorized access will continue via a right-of-way reserved by the Forest Service.

• Access for backcountry skiing and other non-motorized recreational opportunities will be provided by the Conservation Easement.

Federal Parcel 3
The current uses of Federal Parcel 3 include:

• Possible access for backcountry skiing

• No other uses occur

All of these land uses will remain essentially the same post exchange:

• Backcountry skiing and other non-motorized recreational opportunities will be provided post exchange by the Conservation Easement.
Post Exchange Oversight

While Forest Service oversight of the Federal parcels will no longer exist post-exchange, the use or development of these parcels will be subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies (36 CFR 254.3(h)), including but not limited to the Land Use Resolution adopted and enforced by the County of Gunnison and the Watershed Protection District Regulations adopted and enforced by the Town of Crested Butte.

Also, the Conservation Easement and Mineral Extinguishment Agreement will establish future restrictions on the use of the lands conveyed out of Federal ownership, such as prohibition of commercial mining and commercial and residential development. Oversight of these prohibitions and restrictions will be held by the Crested Butte Land Trust, the grantee of the Conservation Easement. In addition, the Town of Crested Butte and Gunnison County will have third party enforcement rights of the Conservation Easement and Mineral Extinguishment Agreement.

Evaluation of Extraordinary Circumstances (36 CFR 220.6(b))

Threatened and Endangered Species or Their Critical Habitat – The Biological Assessment/Biological Evaluation determined the proposed land exchange will have no effect on Canada lynx or Canada lynx critical habitat. While 169 acres of lynx habitat will be lost there will be gains of lynx linkage area and lands within a lynx analysis unit (LAU) totaling 321 acres. Coupled with no expected change in management activity, the proposed land exchange will have no direct or indirect effect on Canada lynx or its habitat.

For the Gunnison sage-grouse, the Forest Service will gain 143 acres of occupied designated critical habitat; there is no habitat on the Federal parcels. The proposed land exchange will have no direct or indirect adverse effect on the Gunnison sage-grouse or its habitat.

There will be no adverse effect on any sensitive amphibians, birds, fish, insects, mammals, or plants, nor on management indicator species or species of conservation concern.

Floodplains, wetlands, or municipal watersheds

Floodplains – Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains have been mapped in Federal Parcel 1 and all non-Federal parcels. This land exchange will not result in the occupancy or modification of the mapped floodplains because:

Federal Parcel 1 -- MEMC is working toward managing surface water runoff and discharge under CDPHE oversight and the Conservation Easement will prohibit mining and development.

All Non-Federal Parcels – Upon acquisition the Forest Service plans to manage these parcels as the adjacent NFS lands, which, in the Gunnison National Forest, is for recreation, grazing and wildlife habitat, and, in the Rio Grande National Forest, is for multiple use.

There will be no hazards downstream of Federal Parcel 1 or any of the non-Federal parcels as a result of the land exchange. The proposal meets the intent of Executive Order 11988.

Wetlands – Executive Order 11990 and Clean Water Act are to avoid adverse impacts associated with destruction or modification of wetlands. There are 2.31 acres of wetlands in the Federal
parcels and 44.46 acres in the non-Federal parcels for a net gain of 42.15 acres under Federal protection. This land exchange will not result in the destruction or modification of wetlands. The proposal meets the intent of Executive Order 11990 and the relevant sections of the Clean Water Act.

**Municipal Watersheds** – Federal Parcels 1 and 2 lie within the Town of Crested Butte’s municipal watershed and MEMC will be subject to any applicable watershed protection regulations. Future replacement of the water treatment plant will be subject to Gunnison County’s Land Use Resolution. The Conservation Easement and Mineral Extinguishment Agreement will be subject to Crested Butte Land Trust oversight and that appropriate to the Town of Crested Butte and Gunnison County as third-party beneficiaries. I have elected to defer agency oversight to the Town of Crested Butte and Gunnison County. Point source and stormwater discharges will continue to be regulated by CDPHE. With the above, the loss of Forest Service oversight will not have a significant effect and is not an extraordinary circumstance.

**Wilderness, Wilderness Study Areas, and National Recreation Areas** – The Federal parcels are not located in or near any Wilderness, Wilderness Study Area, or National Recreation Area.

**Colorado Roadless Areas** - The Whetstone Colorado Roadless Area abuts three sides of Three Peaks Ranch. While not required by roadless area regulations, future management of this parcel will be consistent with that of the adjacent roadless area.

**American Indians and Alaska Native religious or cultural sites** – Telephone calls were held with, and letters were sent to the three Ute Tribes and the Navajo Nation. No tribal concerns were identified.

Archaeological sites, or historic properties or areas - One historic archeological site within the Federal parcels was determined eligible for the National Register of Historic Places. MEMC and CBLT will include protection measures of this site in the conservation easement such that the land exchange will result in no adverse effect pursuant to 36 CFR 800.5(b), as agreed by the State Historic Preservation Officer.

Two eligible historic properties were identified on the non-Federal parcels. These properties will come under the enhanced protection of Federal laws, regulations, and policies.

**Environmental Justice (Executive Orders 12898, 13985, and 14096)** - No minority, under-served or low-income populations will be disproportionally affected by the exchange of parcels.

**Climate Change (Executive Orders 13990 and 14008)** - There would be no effects on climate with the exchange parcels as land uses will remain substantially the same.

No other extraordinary circumstances related to this action were identified. It is my finding that there are no extraordinary circumstances and that this action would not individually or cumulatively have a significant effect on the quality of the human environment. Because no extraordinary circumstances exist, it is my decision to categorically exclude this action from further documentation.
III. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below:

General Exchange Act of March 20, 1922 – This Act authorizes the exchange of land that was reserved from the public domain for National Forest System purposes, when the public interests will be benefited, for lands within the exterior boundaries of national forests that are chiefly valuable for national-forest purposes, and within the same State.

Federal Land Policy and Management Act of 1976 (FLPMA) – This Act supplements the applicable exchange act. It provides for the exchange of land or interests in land, requires that the lands be located in the same State, requires that the State and local needs be considered, requires that values be equal, requires that exchanges be in the public interest and limits exchanges to United States citizens or corporations subject to the laws of a State or of the United States.

Federal Land Exchange Facilitation Act of August 20, 1988 - This Act amended FLPMA to provide for arbitration, compensation for costs assumed, and other changes in the basic exchange authorities.

Land Exchange Regulations (36 CFR 254.3(b)(2)) - The resource values and public objectives served by acquisition of the non-Federal lands must equal or exceed the resource values and public objectives served by the Federal lands to be conveyed. The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

The project complies with the requirements of the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the National Forest Management Act, the Endangered Species Act, and the National Historic Preservation Act, among others.

Public Interest Determination

I have given full consideration to the following public interest factors (36 CFR 254.3(b)(1)):

Achieve Better Management of Federal Lands and Resources:

Conveyance of Federal Parcel 1 will:

- Place the mining infrastructure and tailings currently on National Forest System (NFS) land on land owned by MEMC, which will eliminate liability held by the United States from these structures and improvements while still providing regulatory oversight through State and local government
- Authorize non-motorized recreational use through the proposed conservation easement

Conveyance of Federal Parcel 2 will:

- Place a segment of NFSR 732, a road segment not available to and not needed for public use, in ownership by MEMC
- Authorize non-motorized recreational use through the proposed conservation easement
Federal Parcel 3 has no public access and as a mineral survey fraction is not of National Forest character and at three-acres in size is inefficient to manage.

Conveyance of all three Federal Parcels will provide the opportunity to acquire other lands with higher resource values and will lead to the consolidation of land for more logical and efficient management.

To Meet the Needs of State and Local Residents and Their Economies:

MEMC will agree to permanently prohibit future commercial mining and commercial and residential development on its lands and allow backcountry skiing and other non-motorized recreational opportunities, which are high priorities for the local community.

Ownership of a one-mile-long segment of County Road 12 (Kepler Pass) will allow the County to widen or surface or otherwise manage the road and trailhead parking areas without Forest Service review and authorization.

Ownership of the Keeler Pass Winter Trailhead will allow the County to establish rules and regulations without Forest Service approval, which will better serve the local community given the growth of use of the winter trailhead.

To Secure Important Objectives:

This land exchange will secure the following:

A. Protection of fish and wildlife habitat:

- While there will be a net loss of 169 acres of Canada lynx habitat, there will be a gain of 326 acres of lynx linkage area and 87 acres within a lynx analysis unit. No adverse effect to lynx is expected.
- 143 acres of occupied designated critical habitat for the Gunnison sage-grouse will be acquired and protected
- 160 acres within Three Peaks Ranch will be acquired and managed for elk habitat

B. Protection of cultural resources:

- Two historic properties on the non-Federal parcels will receive enhanced federal protection through the acquisition of the parcels
- The loss of Federal oversight of one historic property within the Federal parcels will be avoided through protections established in the Conservation Easement

C. Protection of watersheds:

- Stream courses (2.18 net miles) and wetlands (42.15 net acres) in all non-Federal parcels, will be acquired and protected with the largest being 33 acres of wetlands (possibly subalpine fens) in Three Peaks Ranch
- Acquisition of Three Peaks, Monchego Creek, and Spanish Creek Ranches will provide the opportunity to decommission unneeded roads, which could reduce sediment in nearby streams
D. Protection of aesthetic values:

- The roadless characteristics of the adjacent Whetstone Colorado Roadless Area (CRA) will be protected by acquiring Three Peaks Ranch and removal of the ranch house and driveway

E. Enhancement of recreation opportunities:

- Ability for backcountry skiers and other non-motorized recreational users to formally use MEMC-owned land in perpetuity
- Fishing opportunities on an additional 2.68 miles of four different streams
- Wildlife viewing opportunities associated with 44 acres of wetlands
- Hunting opportunities on 626 acres

F. Enhancement of public access:

- Currently there is no legal access to the following road and trail segments. This land exchange will remedy that by acquiring either the land or an easement: NFSR 732, NFSR 732.A1, NFST 585, NFSR 787, NFST 769, and NFSR 787.2B
- Currently there is no legal access to a segment of the Colorado Trail and Colorado Divide National Scenic Trail (CDNST). This land exchange will remedy that by acquiring the Moncago Creek Ranch parcel

G. Consolidation of lands for more logical and efficient management:

- The potential for future development of the non-Federal parcels will be eliminated. Development of isolated National Forest inholdings often has a negative impact on surrounding National Forest lands
- The potential need for motorized legal access to Sheep Creek Ranch and subsequent road construction and authorization will be eliminated
- The potential for the development of unauthorized trails and possibly trespass onto the adjacent National Forest land will be eliminated
- National Forest property line location and maintenance will be reduced by 7.15 miles and 39 property corners.

H. Consolidation of lands for more logical and efficient development:

- MEMC will own the land where they operate the water treatment plant thereby enabling them to invest in a new water treatment plant more readily
- MEMC will own all lands needing any hazardous substance remediation, land reclamation, and road and facility maintenance. This will provide local oversight in lieu of Forest Service oversight, which will be less onerous and more efficient.

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6 Easements to be granted by MEMC for NFSR 732, NFSR 732.A1, and NFST 585, and by Hale CB LLC for NFSR 732 are easement acquisition cases separate from but driven by the land exchange.
I. Accommodation of existing or planned land use authorizations:

- Federal Parcel 3 lies within the Slate River allotment for which Ralph R. Allen & Sons, Inc. holds a term grazing permit. Mr. Curtis Allen signed a waiver form where he voluntarily agreed to receive less than a two-year notification required under 36 CFR 222.4(a)(1) concerning the land exchange.

- Outfitter/guide and snow-grooming permits issued by the Forest Service within the parcel to be owned by Gunnison County will be replaced by substantially similar authorizations issued by Gunnison County; including the same level of access and use at the winter trailhead and same commitment to the term established in each permit. Upon expiration of the term of each permit, the County will determine future needs of the permitted use and appropriate terms and conditions, much as the Forest Service would. The outfitter/guide and snow grooming permits issued by the Forest Service will be amended to remove the area within the Federal parcels.

- Utility permits issued by the Forest Service within Federal Parcel 1 to Gunnison County Electric Association and CenturyLink will be replaced by substantially similar authorizations issued by Mt. Emmons Mining Company. The utility permits issued by the Forest Service will be amended to remove the area within the Federal parcel.

J. Promotion of multiple-use values:

- Acquisition of four non-Federal parcels in three watersheds will facilitate management of entire landscapes and watersheds, which makes all management actions more effective, such as removal of unauthorized roads, improvement of Gunnison sage-grouse habitat, and protection of elk migration routes, wetlands, and riparian areas.

K. Implementation of applicable Forest Land and Resource Management Plans:

- Disposal of Federal Parcels 1 and 2 will meet the GMUG NF Forest Plan objective of providing for private sector activities that are in the public interest (i.e., water treatment plant operations and reclamation activities)

- Disposal of Federal Parcel 3 will meet the GMUG NF Forest Plan objective of disposal of small parcels intermingled with mineral patents

- Conveyance of a portion of Federal Parcel 1 to Gunnison County will meet the GMUG NF Forest Plan objective of serving a greater public interest by allowing the County to own the land on which a segment of County road crosses thereby allowing the County to more efficiently surface or widen the road as needed. The County will also own the land on which the winter trailhead resides thereby allowing it to more efficiently manage the growing demand.

L. Fulfillment of public needs:

- Land protections that will be provided by the Conservation Easement and Mineral Extinguishment Agreement after the land exchange will fulfill key public needs of prohibition of mining and commercial and residential development and the allowance of non-motorized recreation in perpetuity.
I have determined that the public interest will be well served for the following reasons (36 CFR 254.3(b)(2)):

1. **The resource values and the public objectives served by the non-Federal lands equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed**

   Acquisition of four private inholdings within three watersheds on two National Forests provides substantial resource values as previously described and serves public objectives such as protecting wetlands, Gunnison sage-grouse habitat, and elk migration corridors; and allowing for watershed management for greater efficiencies to meet Forest Plan objectives. Any resource values served by the Federal lands to be conveyed (e.g., Canada lynx habitat) would be outweighed by the disposal of lands encumbered by hazardous materials and permanent structures; allowance of the establishment of a Conservation Easement and Mineral Extinguishment Agreement to protect community values of prohibition of mining and commercial and residential development and the allowance of non-motorized recreation; and increased efficiencies for MEMC to manage and treat water and reclaim land.

2. The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands

   An analysis identified no substantial conflicts of the intended use of the conveyed Federal land on established management objectives of adjacent Federal lands (which is all National Forest and no Indian Trust lands).

Per 36 CFR 254.3(c), I have determined the values of the lands to be exchanged can be equalized by using cash as the cash amount does not exceed 25 percent of the value of the Federal lands to be conveyed. Per 36 CFR 254.12, I have also determined a reduction in the size of the Federal parcels to reduce or avoid cash equalization is not in the public interest because to do so would require substantial boundary survey modifications by the BLM, which would delay the land exchange and require MEMC and the Crested Butte Land Trust to revise their Conservation Easement, land management plan, and Mineral Extinguishment Agreement.

Per 36 CFR 254.3(f), I determined in the Feasibility Analysis dated July 7, 2022, the exchange proposal is consistent with the land and resource management plans for the Grand Mesa, Uncompahgre and Gunnison National Forests and the Rio Grande National Forest, and I have determined the land exchange is consistent with those two Forest plans.

Per 36 CFR 254.3(i), Phase I Environmental Site Assessments (ESA) were completed for Federal Parcels 2 and 3 and the four non-Federal parcels. No hazardous substances were identified. The Forest Service opted not to perform a Phase I ESA on Federal Parcel 1 because the agency has significant and sufficient information regarding the site, an ESA would not provide additional information, and the parcel will be conveyed to a Potentially Responsible Party. Certain components of the ESAs will be conducted or updated within 180 days prior to the date of the land exchange transaction.

A mineral potential report was prepared for this land exchange, it was approved by the Forest Service and the BLM. The BLM State Director approved the valuation and disposition of the minerals in the lands to be patented without a reservation of minerals.
IV. PUBLIC ENGAGEMENT AND COMMENTS

Scoping was conducted on the proposed land exchange. The Notice of Exchange Proposal (NOEP) was published in four newspapers for four consecutive weeks: Grand Junction Daily Sentinel, Gunnison Country Times, Crested Butte News, and Alamosa Valley Courier. Letters were sent to the three Ute Tribes, Congressional delegation, adjacent landowners, grazing permittee, special use authorization holders, State agencies, Gunnison and Saguache Counties, local governments, non-profit groups, open house attendees, and interested persons. A public open house was held in Crested Butte. A response to comments document was developed to inform the authorized officer of key concerns regarding the proposal and was posted to the project’s website for availability by the public.

I considered timely written comments received in response to the exchange notice published pursuant to 36 CFR 254.8 and the public comment period that occurred concurrently from September 1, 2022, per 36 CFR 254.3(g). Comments and questions were received throughout the process, however. Comments have been responded to in a separate Response to Comments document posted at the project’s website. Every effort has been made to be as transparent in this process as possible by engaging cooperating agencies, providing documents for public access, and partners holding public meetings.

A public meeting was held on May 3, 2023, in Mt. Crested Butte to share findings of key specialist reports, including threatened and endangered species, floodplains, wetlands, surface water quality, recreation, historic properties, mineral potential, environmental site assessment, and appraised values; a draft of this decision memo was also shared. This was not a comment opportunity.

V. ADMINISTRATIVE REVIEW

This land exchange approval document is not subject to the appeal procedures for National Forest System projects or to objection regulations (36 CRF 214 or 36 CRF 218 respectively).

VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

VII. CONTACT PERSON

Contact District Ranger Dayle Funka at dayle.funka@usda.gov or (970) 642-4404.

VIII. SIGNATURE AND FINDINGS

I am approving the proposed land exchange as described above. I have concluded that this decision may be categorically excluded from documentation in an environmental assessment or environmental impact statement and have relied in part on the Conservation Easement and Mineral Extinguishment Agreement to be executed between MEMC and the Crested Butte Land Trust to support this conclusion. I am convinced that this land exchange is in the public interest. Per the requirements of 36 CFR 254.3(b)(2)(i) and (ii), in my opinion the resource values and public objectives served by acquisition of the non-Federal parcels exceed those of the Federal parcels to be
conveyed, and the intended use of the Federal parcels will not substantially conflict with established management objectives on the adjacent Federal lands. My conclusion is based on information presented in this document and the entirety of the Project Record.

CHAD STEWART
Forest Supervisor
Grand Mesa, Uncompahgre and Gunnison National Forests

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EXHIBIT A – LEGAL DESCRIPTIONS

Legal descriptions of parcels are provided per 36 CFR 254.3(j)

Federal Parcel 1:

Township 14 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado, Section 5, Government Lots 1-6, Government Lots 8, 11, 12, 14 and the SE1/4NW 1/4, Section 6, Government Lots 12, 17 and 18.

Township 13 South, Range 86 West, Section 31, Government Lots 26 and 27, Section 32, SW1/4SW1/4.

Federal Parcel 2:

Township 13 South, Range 86 West, Section 31, Sixth Principal Meridian, Gunnison County, Colorado, Government lots 28, 29, 32 and 33.

Township 13 South, Range 87 West, Section 36 (unsurveyed), Tract 37.

Federal Parcel 3:

Township 13 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado, Section 30: Government Lot 21, Section 31: Government Lot 22.

Non-Federal Parcel A (Three Peaks Ranch):

Township 14 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado. Section 28: NW1/4SW1/4, SW1/4NW1/4 Section 29: NE1/4SE1/4, SE 1/4NE1/4.

Non-Federal Parcel B (Monchego Creek Ranch):

Township 45 North, Range 3 East of the New Mexico Principal Meridian, Section 19: W1/2SW1/4 (Lots 3 and 4), SE1/4 SW1/4, SW1/4 SE1/4.

Non-Federal Parcel C (Sheep Creek Ranch):

Township 46 North, Range 4 East, New Mexico Principal Meridian, Section 12: S1/2SE1/4SE1/4SW1/4, SE1/4SW1/4SE1/4SW1/4 Section13: E1/2NW1/4NE1/4NW1/4, E1/2NE1/4NW1/4, W1/2NW1/4NE1/4, SW1/4NE1/4, E1/2N W1/4SE1/4, W1/2NE1/4SE1/4, NW1/4SE1/4SE1/4, N1/2SW1/4SE1/4SE1/4
Non-Federal Parcel D (Spanish Creek Ranch):

Homestead Entry Survey No. 63, a portion of Sections 23, 24, 25, and 26, all in Township 46 North, Range 4 East, of the New Mexico Principal Meridian, more particularly described as follows:

Beginning at corner No. 1, from which the corner to said Section 23, 24, 25, and 26 bears North 87° 22’ West 4.82 chains distant;

thence South 29° 4’ West 9.8 chains to corner No. 2;
thence South 29° 4’ West 6.9 chains to corner No. 3;
thence North 60° 55’ West 19,96 chains to corner No. 4;
thence North 29° 4’ East 6.27 chains to corner No. 5;
thence North 29° 4’ East 13.69 chains to corner No. 6;
thence North 60° 26’ West 39.55 chains to corner No. 7;
thence North 28° 44’ East 19.8 chains to corner No. 8;
thence South 60° 35’ East 41.75 chains to corner No. 9;
thence South 60° 35’ East 17.79 chains to corner No. 10;
thence South 28° 56’ West 19.82 chains to corner No. 11;
thence South 29° 4’ West 3.22 chains to corner No. 1, the place of beginning.
EXHIBIT C – FOREST PLAN CONSISTENCY

Grand Mesa, Uncompahgre and Gunnison National Forest Land and Resource Management Plan


a. *To States, counties, cities, or other Federal agencies when disposal will serve a greater public interest* – an approximately 25-acre parcel of Federal Parcel 1 will be conveyed to Gunnison County by MEMC at closing. This parcel includes a one-mile segment of the Kebler Pass Road and the Kebler Pass Winter Trailhead.

b. In small parcels intermingled with mineral or homestead patents – this applies to Federal Parcel 3.

c. When suitable for development by the private sector, if development (residential, agricultural, industrial, recreational, etc.) is in the public interest – Federal Parcels 1 and 2 are suitable for development by MEMC for mine reclamation and water treatment.

d. When critical or unique resources (wetlands, floodplains, essential big game winter range, threatened or endangered species habitat, historical or cultural resources, critical ecosystems, etc.) effects are mitigated by reserving interests to protect the resource, or by exchange where other critical resources to be acquired are considered to be of equal or greater value.

   o Wetlands: 36.11-acre gain
   o Floodplains: 10.5-acre gain
   o Big game winter range: 160-acre gain
   o TES habitat: 169-acre loss of Canada lynx habitat offset by a gain of 326 acres of lynx linkage area and 87 acres within a lynx analysis unit; 143-acre gain of occupied designated critical Gunnison sage-grouse habitat
   o Historical or cultural resources: loss of one National Register eligible historic property will be avoided through protection measures established in the Conservation Easement
   o Critical ecosystems: An iron fen on NFS lands west of the project area is the nearest critical ecosystem. No adverse effect to this fen is expected (see Surface Water Quality Report). Should the wetlands in Three Peaks Ranch be determined to be fens, they would be protected under Federal regulations.
The GMUG Forest Plan (General Direction) directs to:

01 Acquire rights-of-way on existing Forest System Roads and trails that cross private land.

Through a separate voluntary transaction, rights-of-way will be acquired across private land for segments of NFSR 732, NFSR 732.A1, and NFST 585. Through the acquisition of non-Federal Parcel B (Monchego Creek Ranch), segments of NFSR 787 and NFSR 787.2B will be owned by the United States and managed by the Forest Service. The rights-of-way for NFSR 732 and 732.A1 will be for administrative use; the rights-of-way for NFST 585, NFSR 787, and NFSR 787.2B will be for public use. The Conservation Easement will provide for backcountry skiing and other non-motorized recreational opportunities on portions of MEMC’s patented claims and the Federal parcels thereby ensuring the continued ability to ski the Red Lady.

02 Insure (sic) floodplain and wetland values are approximately equal on both offered and selected tracts in proposed land exchanges or that values are in favor of the United States.

Three Peaks Ranch with 33.80 acres of wetlands and Monchego Creek Ranch with 2.31 acres balance the 2.31-acre loss at Federal Parcels 1 and 2 (reference Executive Order 11990 Protection of Wetlands). Any floodplains associated with these non-Federal parcels will not have adverse impacts because of this land exchange (reference Executive Order 11988 Floodplain Management).

03 Classify lands or interest in lands for acquisitions where lands are valuable for NFS purposes, according to the following priorities:

a. In designated wilderness areas and other congressionally classified areas.

There are no designated wilderness areas associated with the non-Federal parcels.

While inventoried roadless areas are not Congressionally designated lands, Three Peaks Ranch lies adjacent to the Whetstone CRA. From 36 CFR 294.41: “Resources or features that are often present in and characterize Colorado Roadless Areas, including:

(1) High quality or undisturbed soil, water, and air;
(2) Sources of public drinking water;
(3) Diversity of plant and animal communities;
(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;
(5) Primitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation;
(6) Reference landscapes;
(7) Natural-appearing landscapes with high scenic quality;
(8) Traditional cultural properties and sacred sites; and
(9) Other locally identified unique characteristics.”

b. Where lands or rights-of-way are needed to meet resource management goals and objectives.
i. Acquisition of Three Peaks Ranch and removal of the ranch house and access road within the parcel will allow for management consistent with the adjacent 15,433-acre Whetstone CRA.

ii. Acquisition of Monchego Creek Ranch will acquire the portion of NFSR 787 that extends through the parcel, which is also a segment of the Colorado Trail and CDNST, and will acquire a segment of NFSR 787.2B. Acquisition of the parcel will also allow decommissioning of an unauthorized road, 1,100 feet in length, that extends from NFSR 787 across NFS lands and into the non-Federal parcel. The adjacent private lands to the west are being converted to residences thus having a contiguous NFS block of land adjacent to the private lands will facilitate Forest Service management of the area and reduce unauthorized road construction and motor vehicle use.

c. Lands which provide habitat for threatened and endangered species of animals and plants.

Three Peaks Ranch contains 114 acres of Canada lynx habitat. It also contains habitat for sensitive species including American marten, northern goshawk, boreal toad, olive-sided flycatcher, northern harrier, and boreal owl. Monchego Creek Ranch contains 143 acres of occupied designated critical Gunnison sage-grouse habitat and 25 acres of Canada lynx habitat. It also contains habitat for sensitive species including Brewer’s sparrow, northern goshawk, northern harrier, olive-sided flycatcher, boreal owl, boreal toad, and leopard frog.

d. Lands which include floodplain or wetlands.

Three Peaks Ranch contains 33.80 acres of wetlands and Monchego Creek Ranch contains 2.31 acres of wetlands (reference Executive Order 11990 Protection of Wetlands). Any floodplains associated with these non-Federal Parcels will not have adverse impacts because of this land exchange (reference Executive Order 11988 Floodplain Management).

e. On lands having historical or cultural resources, outstanding scenic values, or critical ecosystems, when these resources are threatened by change of use or when management may be enhanced by public ownership.

Acquisition of Three Peaks Ranch and Monchego Creek Ranch will remove the threat of changes in use, and resource management will be enhanced by the acquisition of these private inholdings.

06 Acquire lands needed for big-game winter range

Monchego Creek Ranch has 160 acres of big-game winter range.

This land exchange also meet the GMUG Forest Plan Forest-wide Goals (p. III-4):

- Increase opportunities for exchange and transfer of National Forest System land
- Acquire rights-of-way needed to support management of National Forest System resources
Rio Grande National Forest Land and Resource Management Plan

The Land and Resource Management Plan for the Rio Grande National Forest, issued in 2020 (RGNF Forest Plan), identifies preference of types of land to be acquired to include:

- **Lands with water frontage, wetlands, and associated riparian ecosystems** – Sheep Creek Ranch and Spanish Creek Ranch contain 8.35 acres of wetlands and 2.85 miles of stream course.

- **Lands with unique historical or cultural resources** – Within the non-Federal parcels are two historic properties eligible for the National Register of Historic Places.

- **Lands primarily of value for outdoor recreation purposes and lands needed for aesthetic protection** – Both non-Federal parcels have lands of value for hunting and dispersed recreation.

- **Key tracts that promote effective resource management** – Acquisition of Sheep Creek Ranch will eliminate the need for the Forest Service to consider motorized access requests in the future and will acquire ownership of NFST 769 within the parcel.

- **Lands that would consolidate ownership and reduce miles of property lines and corners to be maintained** – Acquisition of both non-Federal parcels will consolidate ownership by the United States and reduce the amount of property lines (5.75 fewer miles) and corners to be maintained (29 fewer). Acquisition of both non-Federal parcels will eliminate all private inholdings in Township 46 North, Ranges 4 East and 5 East.