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**EXECUTIVE SUMMARY**

**Non Attorney - Client Privileged and Confidential Communication**

**TO:** Town Council

**FROM:** John D. Belkin, Town Attorney  
Barbara Green, Special Counsel

**CC:** Todd Crossett, Town Manager

**DATE:** February 15, 2016

**RE:** Memorandum of Understanding (the "**MOU**") for Mt. Emmons

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**1. U.S. Energy Corp. / Mt. Emmons Mining Company Transaction.**

The MOU attached to this Executive Summary is the result of conversations among Freeport-McMoRan and its wholly-owned subsidiary, Mt. Emmons Mining Company ("**Mt. Emmons**"); the State of Colorado Department of Health and the Environment, Water Quality Control Division (the "**Division**"); State of Colorado Department of Natural Resources, Division of Reclamation Mining and Safety ("**DRMS**"); Gunnison County (the "**County**"); and the Town of Crested Butte (the "**Town**"; together with Mt. Emmons, the Division and DRMS, collectively, the "**Parties**").

Mt. Emmons is a Party because U.S. Energy Corp. ("**USE**") has transferred (or is in the process of transferring) all properties, mining and mill-site claims, improvements, permits and the mine project rights to Mt. Emmons.

**2. Background Efforts on the Wastewater Treatment Facility.**

Between 2006 and 2009 the Town, the County and High Country Citizens' Advocates ("**HCCA**") (collectively, the "**Community Parties**") brought actions before the Division and the State of Colorado Office of Administrative Courts to make the Division require USE to satisfy certain surety requirements (i.e., pre-paid wastewater treatment plant operator contract and liquid

financial assurances) and naming USE affiliated companies as co-permittees on the discharge permit ("**Permit**") for the Keystone Mine wastewater treatment facility ("**WTF**"). The administrative law judge found that although the Division has the authority to require USE to satisfy financial and other assurances as conditions to the Permit, the circumstances at the time did not appear to warrant the Court requiring the Division to impose financial and other assurances.

3. **The MOU.**

Conversations leading to the MOU began following a written request from the Town and the County in August 2015. The Town and the County requested that the Division impose financial assurance requirements on USE because of concerns that USE might not have the financial capacity to continue to operate the WTF. In response, the Director of DRMS, Ginny Brannon, and the Director of the Division, Pat Pfaltzgraff, convened a series of meetings among the Parties. Over the last four months, as the conversations have progressed, the Parties agreed that the only way to resolve concerns would be to work in concert. The Parties have spent considerable time discussing a cooperative partnership concerning the continued operation of the WTF, the reclamation of the mine site (the "**Site**") and the disposition of the mining and mill-site claims and patented fee lands in connection with the mine. Those goals are reflected in the MOU and can be summarized as follows:

1. Protection of the environment through Mt. Emmons' compliance with environmental laws and regulations;
2. Parties' implementation of technical solutions to environmental issues at the Site;
3. Parties working on funding solutions to address environmental issues at the Site;
4. Mt. Emmons' disposition of the mining and mill-site claims and fee simple lands;
5. Parties working with the federal legislative delegation on legislation to implement long-term solutions (e.g., disposition of mining and mill-site claims and fee simple lands).
6. Parties' development of site specific water quality standards for Coal Creek, with monthly technical meetings to address the same;
7. Division's continuation of the current Permit for the WTF at the Site until the June 2017 Gunnison Basin Rulemaking before the CDPHE, Water Quality Control Commission; and

Perhaps most importantly, the MOU also provides that Mt. Emmons voluntarily pre-fund the first two years of contractor labor costs at the WTF by escrow or other suitable mechanism (based on the annual operating budget, approximately \$1 million) following transfer of

ownership from USE to Mt. Emmons. This substantially accomplishes what the Town and the County requested of the Division in their August 2015 correspondence.

4. **Conclusion.**

The MOU reflects the framework for the Parties to work cooperatively to accomplish the goals of the MOU. It represents the beginning of what should be a long relationship of working together to solve the complicated issues that the Crested Butte community has worked on for decades. The difference from earlier efforts is that unlike USE, Mt. Emmons is a willing partner in solving these issues with the goal of protecting the environment, and DRMS and the Division are taking leadership roles as partners with the Town and the County.

While the steps forward following execution of the MOU could well take years to implement, and with certainly require the continued commitment of the Parties working with the local community, on-going trust building is the linchpin to accomplishing the MOU goals. The cooperation and efforts of Mt. Emmons, the Town, the County, the Division, DRMS, HCCA, Senator Bennett and many others will be crucial to our success. The Parties would like to thank everybody for their efforts over the years in reaching this important day, namely the Crested Butte community, HCCA, the Coal Creek Watershed Coalition, the Red Lady Coalition, Senator Bennett, and the long list of others that have worked tirelessly over the years to reach this moment.

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