TOWN OF CRESTED BUTTE, COLORADO, SPECIAL TOWN COUNCIL MEETING
FRIDAY, FEBRUARY 26, 2016 FROM 6:00PM to 9:00PM

PUBLIC NOTICE IS HEREBY GIVEN THAT THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO WILL HOLD A SPECIAL MEETING ON FRIDAY, FEBRUARY 26, 2016 FROM 6:00PM TO 9:00PM IN JERRY'S GYM LOCATED DOWNSTAIRS IN THE CRESTED BUTTE TOWN HALL, 507 MAROON AVENUE, CRESTED BUTTE, COLORADO.

I. CALL TO ORDER

II. SPECIAL MEETING – 6:00PM TO 9:00PM

a. Town Council Discussion and Possible Approval of Memorandum of Understanding for Mt. Emmons (Mt. Emmons Project) by and Among Mt. Emmons Mining Company, a wholly owned subsidiary of Freeport-McMoRan Inc., the Colorado Department of Public Health and the Environment, Water Quality Control Division and Air Pollution Control Division, Colorado Department of Natural Resources, Division of Reclamation Mining and Safety, Gunnison County, Colorado and the Town of Crested Butte, Colorado Regarding Certain Matters in Connection with the Mt. Emmons Mine Site and Project, the Historic Keystone Mine and Associated Waste Water Treatment Plant and Other Related Matters.

III. ADJOURNMENT

Published in the Crested Butte News on February 18 and 25, 2016, and Posted on February 17, 2016.

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MEMORANDUM

Non Attorney - Client Privileged and Confidential Communication

TO: Town Council

FROM: John D. Belkin, Town Attorney

CC: Todd Crossett, Town Manager

DATE: February 25, 2016

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

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- Attached are the MOU and the Executive Summary.

- Also attached are several key questions and answers (Q&As) that relate to what will most likely be the salient issues/questions raised by the public during the meeting.

- The Q&As relate to the points addressed in the MOU and are intended to help with the public discussion.

- I have also included a map from U.S. Energy Corp.'s 2012 Plan of Operations that identifies the properties at issue in connection with the bullet in the MOU relative to the disposition of the mining and mill site claims and the patented fee-owned lands on Mt. Emmons.

- Lastly, I previously laid out in an E-mail to you what I propose to be the order for tomorrow night's meeting. I have spoken to Glenn and he will run through the order at the beginning of the meeting for your approval, comment, etc., so that everybody is on the same page and so that the public has a clear pathway for ample comments, questions and answers.

- **RECOMNDATION RE: APPROVAL OF THE MOU**: At the conclusion of the discussions tomorrow night, I recommend that the Town Council move (with second, followed by a roll call vote) to approve the MOU, as presented by the Town Attorney, and insodoing, authorize the Mayor to execute the same.

- Please call me should you have any questions. Thank you.

Staff Report

To: Mayor and Town Council

From: Todd Crossett, Town Manager

Subject: **Mt. Emmons Memorandum of Understanding**

Date: February 25, 2016

Background:

Some forty years have passed since AMAX Inc., began exploration for molybdenum at Mt. Emmons under a lease from US Energy and Crested Corporation, the owners of the dormant Keystone Mine - closed in the 1960s and formerly mined for silver, lead and zinc.

In 1981, by court order, the water treatment facility was completed at the site of the historic Keystone Mine and began to treat water emanating from the mine and tailings prior to its entry into Coal Creek.

The community of Crested Butte has been concerned about the impact of proposed mining on Mt. Emmons and about the ongoing protection of its watershed for the entirety of the ensuing decades.

In 2014, the Town, Red Lady Coalition and HCCA engaged in the most recent of multiple conversations with US Energy Corporation about a solution to the mine and about providing for the ongoing operation of the water treatment plant. The parties failed to reach alignment on a path forward at that time.

In 2015, with the decline of the oil and gas market, the Town and its partners became increasingly concerned about US Energy's financial capacity to continue to operate the treatment plant should its financial fortunes continue to be negatively impacted by declining oil and gas revenues. The Town and Gunnison County sent mutual letter to the State in August of 2015 expressing that concern.

The conversation of the last several months that arose out of the August 2015 letter has yielded an unprecedented opportunity. Earlier this month, Mount Emmons Mining Company (MEMCO), a fully-owned subsidiary of Freeport McMoRan, purchased US Energy's assets at Mt. Emmons and the historic Keystone Mine. This opened the door for consideration of the MOU before the Council today.

The Town's highest priority is the protection of its watershed. MEMCO's agreement to prefund two years of water treatment plant operations provides immediate assurance around the Town's most timely and critical concern.

Other high priorities for the Crested Butte community include disposition of mining and mill site and fee simple lands and issues related to ongoing environmental stewardship.

While the MOU does not offer final resolution of these issues, it does address each and every priority issue held by the community for the past 40 years. The parties to the MOU, Mount Emmons Mining company, The Town, Gunnison County, Colorado Department of Public Health and Environment and the Colorado Department of Natural Resources, are all coming together as willing participants to pursue resolution of these issues. Additionally, numerous key stakeholders have indicated their willingness to support moving forward with the MOU.

This is the first time all key parties have been able to move ahead with the current level of alignment and commitment. This will take time and will involve problem solving and trust building. But it is the clearest path forward in 40 years.

See Executive Summary, MOU and FAQs in packet for further detail

Recommendation:

Staff echoes Attorney Belkin's recommendation that Council approve the MOU.

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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 contactor 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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MEMORANDUM OF UNDERSTANDING FOR MT. EMMONS

Mt. Emmons Project
February 12, 2016

This Memorandum of Understanding ("MOU") memorializes the understandings between Mt. Emmons Mining Company ("Mt. Emmons"), a wholly owned subsidiary of Freeport-McMoRan Inc., and the local and state government parties ("Government Parties") listed below (collectively, the "Parties") should Mt. Emmons acquire the Mt. Emmons Mine Site, including the historic Keystone Mine and the existing water treatment plant ("Plant") (collectively, "the Site") from U.S. Energy Corp. ("USE").

The Government Parties the Colorado Department of Public Health and the Environment ("CDPHE"), its Water Quality Control Division ("WQCD") and Air Pollution Control Division ("APCD"), Colorado Department of Natural Resources ("DNR"), its Division of Reclamation Mining and Safety ("DRMS") (collectively, "State Agencies), Gunnison County, Colorado (the "County"), and the Town of Crested Butte, Colorado (the "Town").

The purposes of this MOU are to protect the public health, safety, welfare and the environment, and to serve as a basis for future cooperation and agreement among the Parties on the matters addressed herein.

The Government Parties will assist Mt. Emmons in identifying and supporting cost effective solutions at the Site to ensure on-going protection of public health, safety, welfare and the environment, in exchange for other considerations given in this MOU.

Mt. Emmons has agreed as a goodwill measure to voluntarily pre-fund by escrow or other suitable mechanism the first two years of contactor labor costs at the treatment plant (based on the annual operating budget of approximately $1 million) following the transition of site ownership to Mt. Emmons. Monthly invoices will be paid from the escrow account or other equivalent.

The Parties intend to mutually work to achieve the following:

- Support Mt. Emmons in acquiring the Site and assist in ensuring compliance with all applicable environmental laws and regulations.
- Find and implement technical solutions to the environmental issues at the site.
- Discuss long-term funding for environmental issues at the Site.
- Transfer any federal, state, and local permits and authorizations from USE to Mt. Emmons as soon as practicable after transfer of the Site.
- Pursue disposition of the mining and mill site claims and fee simple lands in a mutually beneficial way.
- Collaboratively work to develop site-specific water quality standards for Coal Creek that may include monthly technical meetings with interested Parties.
- Continue the current administrative extension of the Colorado Discharge Permit System discharge and stormwater permits until after a final decision is issued by

the Water Quality Control Commission in the June 2017 Gunnison Basin Rulemaking proceeding.

- Work with the federal legislative delegation on any mutually acceptable legislation required to implement long term solutions.

The Parties recognize that this MOU is only a first step in a long-term relationship. The parties commit to working together to achieve further agreements to address the actions listed above in more specificity.

The Parties do not intend this MOU to have any effect on the past, present or future liability of Mt. Emmons or any other related entity, as no such liability has been determined as a matter of law, and none is to be implied by or inferred from this MOU. Rather, Mt. Emmons has been proactively cooperating with the Government Parties to ensure sustained operation of the Plant and appropriate management of ancillary environmental issues described in this MOU. Consequently, this MOU should be read to reflect that the actions of Mt. Emmons are voluntary and not compulsory, and the Parties intend this MOU to facilitate a public-private partnership focused on addressing the issues in the manner described in this MOU.

This MOU is intended as a measure of good faith and fair dealings between the Parties and as a basis for long-term cooperation in furtherance of future agreements. The Parties do not intend this MOU to be, and shall not be, the basis for a non-cooperative legal action or vehicle for enforcement. Further, no person that is not a party to this MOU may rely on any provision of this MOU for any purpose.

Signed (see following pages for signatures):

William Cobb
Vice President
Mt. Emmons Mining Company

Larry Wolk, MD, MSPH
Executive Director and Chief Medical Office
Colorado Department of Public Health and Environment

Bob Randall
Executive Director
Colorado Department of Natural Resources

Glenn Michel
Mayor
Town of Crested Butte, Colorado

Paula Swenson
Chairperson
Board of County Commissioners of the County of Gunnison, Colorado

_____

William Cobb Date
Vice President
Mt. Emmons Mining Company

Larry Wolk, MD, MSPH Date
Executive Director and Chief Medical Office
Colorado Department of Public Health and Environment

_____

Bob Randall Date
Executive Director
Colorado Department of Natural Resources

_____

Glenn Michel Date
Mayor
Town of Crested Butte, Colorado

_____

Paula Swenson Date
Chairperson
Board of County Commissioners of the County of Gunnison, Colorado

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John D. Belkin, Esq.
E-mail: jbelkin@jbelkinlaw.com

Q&A
(For Public Discussion)

TO: Town Council

FROM: John D. Belkin, Town Attorney

CC: Todd Crossett, Town Manager

DATE: February 26, 2016

RE: **Questions and Answers ("Q&As")** re: Memorandum of Understanding (the "**MOU**") for Mt. Emmons

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Q: Who is the Mt. Emmons Mining Company ("MEMCO")?

A: (1) MEMCO is a wholly-owned subsidiary of Freeport-McMoRan.

(2) Freeport acquired MEMCO when Freeport acquired Phelps Dodge by reverse merger in 2007.

(3) MEMCO is a "legacy" entity that previously owned the Mt. Emmons Mine site and previously constructed the water treatment plant.

Q: Does Freeport want to develop a molybdenum mine?

A: From the beginning of our conversations with Freeport in early November 2015, Freeport has stated unequivocally that it has no intent to develop a molybdenum mine on Mt. Emmons.

Q: Why would Freeport take on the liability of operating the water treatment plant?

A: (1) Because MEMCO is a legacy owner of the Mt. Emmons Mine Site, along with the water discharge treated by way of the water treatment plant, and the plant itself

(collectively, the "**Project**"), under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (CERCLA), also known as the "Superfund" law, MEMCO ***could*** have liability for the Project should the Project be found to be a Superfund site.

(2) If, prior to MEMCO's acquisition of the Project from U.S. Energy Corp. ("**USE**"), USE had failed to operate the water treatment plant as required by the Colorado Department of Health and Environment, Water Quality Control Division issued discharge permit, there was a possibility that the Project could have become a Superfund site.

(3) Had the Project become a Superfund site, because of MEMCO's legacy ownership of the Project, MEMCO could have been identified as a "potentially responsible party" (PRP) under CERCLA.

(4) Assuming the foregoing, because of MEMCO's potential PRP status under CERCLA, MEMCO likely felt it was better to take on the Project from USE so that it could control the outcome of the Project going forward rather than risk the Project becoming a Superfund site with the liability under CERCLA likely attaching to MEMCO should USE have experienced financial difficulties and become unable to operate the water treatment plant.

(5) MEMCO's acquisition of USE's interests in the Project could probably be characterized as more of a defensive more vis a vis USE than anything, i.e., likely protecting MEMCO from "inheriting" a Superfund site from USE under duress, rather than taking it over on MEMCO's own terms and working with federal, State and local authorities to ensure the continued operation of the water treatment plant, and thus the protection of the environment.

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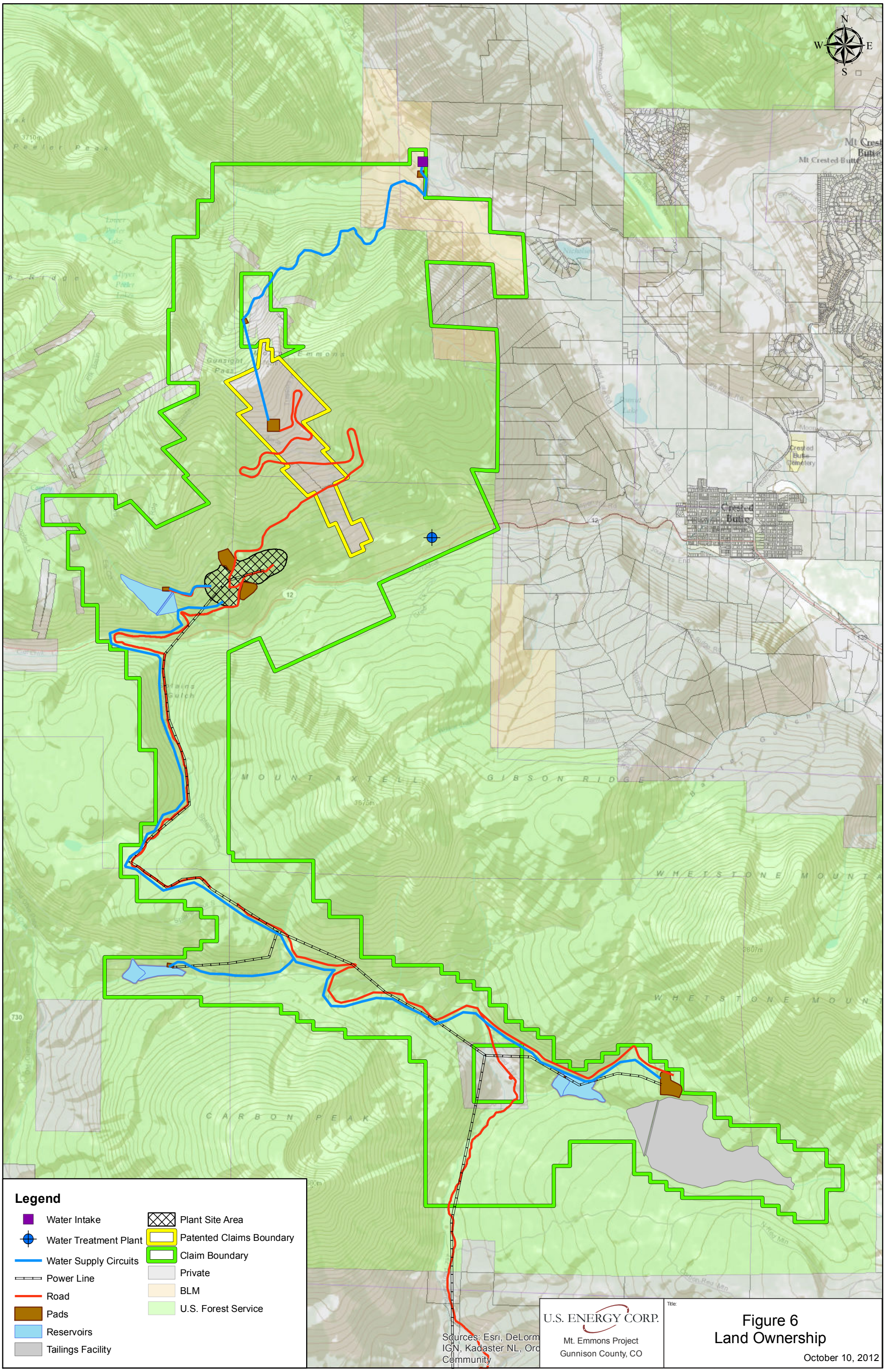
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Water Intake
Water Treatment Plant
Water Supply Circuits
Power Line
Road
Pads
Reservoirs
Tailings Facility
Plant Site Area
Patented Claims Boundary
Claim Boundary
Private
BLM
U.S. Forest Service
Sources: Esri, DeLorme, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community
U.S. ENERGY CORP.
Mt. Emmons Project
Gunnison County, CO
Title:
Figure 6
Land Ownership
October 10, 2012
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From: Glenn Michel
To: Lynelle Stanford
Subject: Fwd: MOU with Freeport McMoran
Date: Tuesday, February 23, 2016 8:19:03 PM

Thanks Margo,

I have forwarded your letter to the town clerk to be included in the public record.

Great to hear from you.

Glenn Michel

Sent from my iPad

Begin forwarded message:

> **From:** Margaret Levy <margot_cb@hotmail.com>
> **Date:** February 23, 2016 at 7:04:15 PM MST
> **To:** "glennmichel@crestedbutte-co.gov" <glennmichel@crestedbutte-co.gov>
> **Cc:** "TCrossett@crestedbutte-co.gov" <TCrossett@crestedbutte-co.gov>, "LStanford@crestedbutte-co.gov" <LStanford@crestedbutte-co.gov>
> **Subject: MOU with Freeport McMoran**
>
> Dear Town Council Members,
>
> I am sorry that I will be unable to attend the Special Meeting on Friday due to my work schedule.
>
> However, I want to urge you to approve the Memorandum of Understanding that you will be considering. This will provide so many important things for our community:
>
> - It ensures that the Water Treatment Plant will continue to function for the short-term (2 years)
>
> - It safeguards water quality in Coal Creek during that time. We do not want a situation like they had in Durango!
>
> - It buys some time to negotiate a long-range solution with a mining company that wants to work with us for a real solution.
>
> This is the opportunity I have been waiting for years — the chance to finally remove the shadow of threatened mining from Mt. Emmons. **Grab this opportunity! Go for it!** I believe you have almost universal support among the community to approve the MOU.
>
> Thank you for the opportunity to comment.

Sincerely, Margot Levy