

**Decision Memo – USDA Forest Service  
Climax Molybdenum Company  
Agricultural Irrigation and Livestock Watering System Easement for  
Buehler #3 Ditch  
Under the Colorado Ditch Bill Act of 1986**

**Arapaho and Roosevelt National Forests & Pawnee National Grassland  
Sulphur Ranger District  
Grand County, Colorado  
March 2006**

**I. DECISION**

**A. Description of Decision**

It is my decision to approve the conditioning of an *Agricultural Irrigation and Livestock Watering Easement* under the Colorado Ditch Bill Act of 1986, being issued to Climax Molybdenum Company (Climax), of Parshall, Colorado, for the purpose of operating and maintaining a water conveyance system known as the Buehler #3 Ditch. Conditions will be incorporated into the Easement by way of an Operation and Maintenance Plan and optional provisions. The Buehler #3 Ditch is located in the SE1/4NW1/4 Section 34, T1S, R79W, 6<sup>th</sup> Principal Meridian, Grand County Colorado. (See attached Exhibit A)

Under the terms of the Act of 1986, this Easement will be granted without fees.

The Buehler #3 Ditch is owned by Climax and operated by the Williams Peak Ranch, under a lease agreement between Climax and Williams Peak Ranch, for agricultural and livestock irrigation on the Williams Peak Ranch. The ditch is **449** feet long within a **20-foot** wide right-of-way, 10 feet either side of centerline, including cuts and fills. Water is diverted from a point on the west bank of the South Branch of the Middle Fork of Battle Creek, which then carries the water to the private land adjacent to National Forest System (NFS) lands. The diversion is an earthen berm and 24” corrugated metal pipe, which diverts water into the ditch. The creek is funneled into a 36” PVC pipe. There is an open grassy, access route leading to the headgate from adjacent private property. The water right associated with the Buehler #3 Ditch is .5 cubic foot/second. This right was appropriated to Erwin C. Buehler on 12/31/1913 and adjudicated on 8/11/1917. The application states the ditch was constructed in 1913.

**B. Purpose of Decision**

While granting of such Easements is non-discretionary and, therefore, not a Federal action subject to analysis or review (FSM 2729.16f), analysis was conducted for this use to determine if there was a need for additional conditioning of the Easement for operation and maintenance activities, and for the protection of Threatened, Endangered, or Sensitive (TES) Species. The purpose of this decision is to document any environmental concerns associated with the operation and maintenance of the

ditches, and their potential affect on TES Species, and to document the need for any additional conditioning of the Easement necessary to protect the environment from degradation due to continued operation of the water conveyance system.

## **II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION**

Decisions may be categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect. Supporting documents for this project will be retained in a project file on the Sulphur Ranger District, in Granby, Colorado.

### **A. Category of Exclusion**

The project is within the category of exclusion in FSH 1909.15 Category 31.2-3: Approval, modification or continuation of minor special uses of National Forest System (NFS) lands that require less than five contiguous acres. The area covered by the water conveyance system right-of-way is .21 acres.

### **B. Relationship to Extraordinary Circumstances**

There are no conditions that would constitute a significant effect on an extraordinary circumstance related to the proposed authorization. This conclusion is based on evaluation of the following items:

*1. Federally listed Threatened, Endangered, Proposed and Forest Service Sensitive Species or their Critical Habitat (Endangered Species Act: Section 7.)* – A Biological Report for Wildlife was prepared and approved on July 12, 2005, for seven Ditch Bill Easement applications on the Sulphur Ranger District. The Summary of Determinations on page 15 of the report shows:

- A determination of No Effect for Canada lynx, a threatened species
- A determination of No Impact for the Three-toed woodpecker, Boreal owl, Northern goshawk, Olive-sided flycatcher, American marten, pygmy shrew, American marten, North American wolverine, and the Boreal toad, all sensitive species.

A Biological Report and Biological Assessment were also prepared for fish species. The Biological Assessment was submitted to the U.S. Fish and Wildlife Service (USFWS) for concurrence. The determination in the Biological Assessment was "May Affect, Likely to Adversely Affect" for the four endangered down stream fish species. A Biological Opinion dated November 29, 2005, was received from the USFWS stating the proposed action would not jeopardize the four endangered fish species if certain terms and conditions were met. To comply with these terms and

conditions, each easement holder will be provided a Recovery Agreement, in which they will enter into an agreement with the USFWS to support recovery operations for the four down stream fish species. The USFWS Recovery Program was intended to be the reasonable and prudent alternative for individual projects to avoid the likelihood of jeopardy to the endangered fishes from depletions from the Upper Colorado River Basin.

The Biological Evaluation of sensitive species provided a “no impact” determination for the Colorado River cutthroat trout and mountain suckers.

A *Biological Report for Plants* was prepared and dated August 8, 2005. The findings of the report state that there were no occurrences of threatened, endangered, proposed or sensitive plant species in the project area. No consultation with the U.S. Fish and Wildlife Service was required. Suitable habitat for several Region 2 Sensitive species was located. The summary of effects determination for Region 2 Sensitive plant species is, “May adversely impact individuals, but not likely to result in a loss of viability in the planning area, nor cause a trend to federal listing.” No additional conditioning of the Easement is required for protection of any plant species, although recommendations were made concerning noxious weed management and cattle grazing.

2. *Floodplains and Wetlands* – A Hydrology Report was prepared by the District Hydrologist, dated August 24, 2005. The report states that flood plains and wetlands effects are inherent in water diversion facilities associated with streams. The ditch infrastructure occupies a relatively small percentage of floodplains and should have no effect on flood stage. Several relatively common types of wetlands are indirectly affected by dewatering, but this impact is associated with a valid State water right and is non-discretionary. The Hydrologist did not find any significant effects on floodplains or wetlands. Terms and conditions that will be included with the easement should, in fact, have a positive effect on the wetlands.

3. *Municipal Watersheds* – While nearly all watersheds on the Forest provide for public water supplies, there are no designated municipal watersheds within the Forest boundary. Therefore, since this use does not occur in a designated municipal watershed, and the use will have no effect on a public water supply, there are no effects on this circumstance.

4. *Congressionally Designated Areas* - The project area is not within or near any Congressionally designated areas, therefore there will be no effect on such areas.

5. *Research Natural Areas and Inventoried Roadless Areas* – The project area lies within the Lower Williams Fork Geographic Area which does not have any Research Natural Areas in it, therefore there will be no effects on this circumstance.

The project area lies within an Inventoried Roadless Area, as shown in the Routt Forest Plan. It is identified as Roadless Area R21131-Copper Mountain (Exhibit B). All Inventoried Roadless Areas were evaluated to determine suitability as potential wilderness. The Copper Mountain Roadless Area did not meet the criteria for

capability or availability for wilderness designation, as documented on page 3-182 of the Routt Forest Plan.

There is an access route to the Buehler #3 Ditch, which was mostly grassed over during a July 2005 site visit. It runs more or less parallel to the ditch, and is less than 500 feet long. The route was probably originally used for access to the ditch. There is no public access to it and it is not a National Forest System Road.

The route provides access to an outstanding right in the form of a historic water right. The existence of the route pre-dates the designation of the area as roadless; it was probably first used when the ditch was built in 1913. The January 12, 2001 Federal Register-Section 294.12(b)3 states that, "Notwithstanding the prohibitions in paragraph (a) of this section, a road may be constructed or reconstructed in an inventoried roadless area if the Responsible Official determines that one of the following circumstances exists: A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;...."

Because use of the access route is historic, and the initial roadless rule allowed these types of roads in a roadless area, and since the route has no public use, its continued existence and occasional use for motorized ditch access would not change the unroaded character of the area. Motorized access would be limited to necessary maintenance and operation of the ditch. Use of All Terrain Vehicles (ATV's), foot travel and horse travel would be encouraged over use of a full sized pickup truck. Use of small heavy equipment would be permitted as needed. These guidelines will be included in the Operation and Maintenance Plan made part of the Easement. The actual need for this type of access would be minor, as there is very little need to visit the ditch location. The Holder would not be allowed motorized access on this route for any other purpose, such as hunting, camping or firewood cutting. Considering the above facts, managing this route as a classified private road for access to the Buehler #3 Ditch will not create any significant effect on this circumstance.

*6. Native American Religious or Cultural Sites, or Areas* – The Buehler #3 Ditch and associated diversion were reviewed by the Forest Archaeologist. There are no known American Indian religious or cultural sites, or archaeological sites in the project area. Therefore, there will be no effect on this circumstance as a result of this project.

*7. Archaeological Sites or Historic Properties or Areas* – The Forest Archaeologist has made a determination that issuance of the Easement will not have the potential to adversely affect historic properties as defined by the National Historic Preservation Act. No consultation with the State Historic Preservation Office will be necessary. The U.S. Forest Service has no further obligations under Section 106 of the National Historic Preservation Act, provided that the project area or methods of implementation are not modified. Therefore, there will be no effect on this circumstance as a result of this project.

The existing headgate may need to be replaced or improved to be in compliance with the terms of the Ditch Bill Easement. The Forest Archaeologist has determined that

no further consultation would be needed when and if a new headgate is installed or the existing one is improved.

### **III. OTHER RESOURCES CONSIDERED**

#### **A. Invasive species**

Canada thistle is present at the headgate and along the access route. The Easement will contain conditions concerning treatment, prevention and management of invasive weed species. These conditions govern use of certified weed-free seed, hay and mulch, treatment of invasive weeds, and cleaning of any equipment brought to the site to be sure it is free of noxious weeds. The Holder will be required to treat existing weeds through the terms of the Operation and Maintenance Plan.

#### **B. Soil Erosion**

The Buehler #3 Ditch and diversion area were examined for erosion problems. The ditch itself has no potential for erosion, however bare soil at the site of the diversion needs to be seeded and mulched to prevent potential soil erosion and spread of the Canada thistle that is present.

### **IV. SCOPING**

Processing of Sulphur Ranger District Ditch Bill Easements was listed in the 2<sup>nd</sup> and 3<sup>rd</sup> quarter of the 2005 Schedule of Proposed Actions for the Arapaho and Roosevelt National Forests and Pawnee National Grassland.

A scoping letter was sent out to potentially interested parties on April 1, 2005, requesting public input on eight Ditch Bill Easement applications, including the Buehler #3 Ditch. Comments were grouped into 3 categories.

1. Three responses were received in support of issuing the Easements, with no concerns expressed.
2. One response was received stating that the “right thing to do would be to phase the ditches out of existence so that the water could be justly serving the public.”
3. One response was received which summarized the ditch bill eligibility requirements, and requesting that the Forest Service consider conditioning the Easements to “minimize damage to scenic and esthetic values and fish and wildlife and otherwise protect the environment.” This respondent also requested the Forest Service require periodic review of the terms and conditions of the Easement and compliance with the National Environmental Policy Act.

Comments from group number 3 were substantive and provided suggestions for environmental analysis. The Buehler #3 Ditch meets the criteria for eligibility for an

Easement under the Ditch Bill Act, and has been reviewed for potential environmental concerns. The Easement may be revised or modified if necessary to comply with the requirements of the Endangered Species Act, or if terms and conditions are no longer needed to comply with the requirements of applicable State or Federal law. Scenic values and aesthetics will be protected by the Operation and Maintenance Plan. Review of this application will comply with the National Environmental Policy Act.

## V. **FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS**

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

**Federal Land Policy Management Act of 1976 (FLPMA) as amended by Public Law 99-545, of October 27, 1986 (Colorado Ditch Bill):** The Colorado Ditch Bill directed the Secretary of Agriculture to issue permanent Easements to owners of certain qualifying water development facilities used to divert water for agricultural irrigation and/or livestock watering purposes on National Forest System (NFS) lands in 17 western states. These facilities include ditches, reservoirs, pipelines, canals, etc. The Buehler #3 Ditch meets the eligibility requirements for an Easement under this authority.

**Forest Plan Consistency (National Forest Management Act) -** This Act requires the development of long-range land and resource management plans (Forest Plans). As required by this act, the Routt Forest Plan was approved in 1997. Because the project area is in a portion of the Sulphur Ranger District previously administered by the Routt National Forest, the Routt Forest Plan was used for guidance on this project. The Forest Plan provides guidance for all natural resource management activities on the Forest. The Act requires that all projects and activities be consistent with the Forest Plan. The project area lies within Management Area 5.11-General Forest and Rangeland – Forest Vegetation Emphasis. This management area is characterized by forest and grassland communities that are managed for multiple use while maintaining high quality wildlife habitat. Management area direction offers no specific guidelines for special use authorizations, however the results of the Biological Report shows that the proposed use will have no effect on wildlife habitat. This project is therefore consistent with the Routt Forest Plan.

**Environmental Justice (Executive Order 12898) -** This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

**National Environmental Policy Act -** This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

**Effects of Alternatives on Social Groups** – There will be no effects on minorities, Native Americans, women or the civil liberties of any other American citizen.

**Effects of Alternatives on Prime Rangeland, Forest Land and Farm Land** – The proposal presented is in compliance with Federal Regulations for prime range, forest and farm lands. The definition of prime forest land does not apply to lands within the Arapaho National Forest. The project area is within the Skylark Grazing Allotment, which is permitted to the Williams Peak Ranch; the operator of the Buehler #3 Ditch Easement. The proposal will have no effect on the grazing allotment. There are private agricultural lands adjacent to the NFS lands where the project area lies, and the Buehler #3 Ditch provides agricultural irrigation to those lands. The Buehler #3 Ditch is beneficial to these adjacent private agricultural lands.

**Energy Requirements and Conservation Potential of Alternatives** – The energy required to implement the proposal in terms of petroleum products would be insignificant when viewed in light of the production costs and effect of the national world wide petroleum reserves. Very little petroleum-based energy will be expended in the operation and maintenance of this water conveyance system.

**Air Quality** – This project will have no effect on air quality. There will be minor use of motorized equipment for maintenance of the ditch and headgate and minimal dust will be created from operation of the system.

**Wild and Scenic Rivers Act** – There are no designated Wild or Scenic Rivers on the Sulphur Ranger District, therefore this project will not affect any such rivers.

## **VI. ADMINISTRATIVE REVIEW OR APPEAL**

This decision is not subject to a higher level of administrative review or appeal pursuant to 36 CFR 215.4.

## **VII. IMPLEMENTATION DATE**

This decision may be implemented immediately. An Easement will be issued under the terms of the Colorado Ditch Bill Act, with terms and conditions necessary to protect the environment from degradation.

## **VIII. CONTACT PERSON**

Further information about this decision can be obtained from Patricia Hesch, Lands Staff at the Sulphur Ranger District, 9 Ten Mile Drive, P.O. Box 10, Granby CO 80446; Phone (970) 887-4136; FAX (970) 887-4102, or electronically at [phesch@fs.fed.us](mailto:phesch@fs.fed.us).

**IX. SIGNATURE AND DATE**

I have concluded that this decision may be categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment as it is within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect. My conclusion is based on information presented in this document and the entirety of the Planning Record.

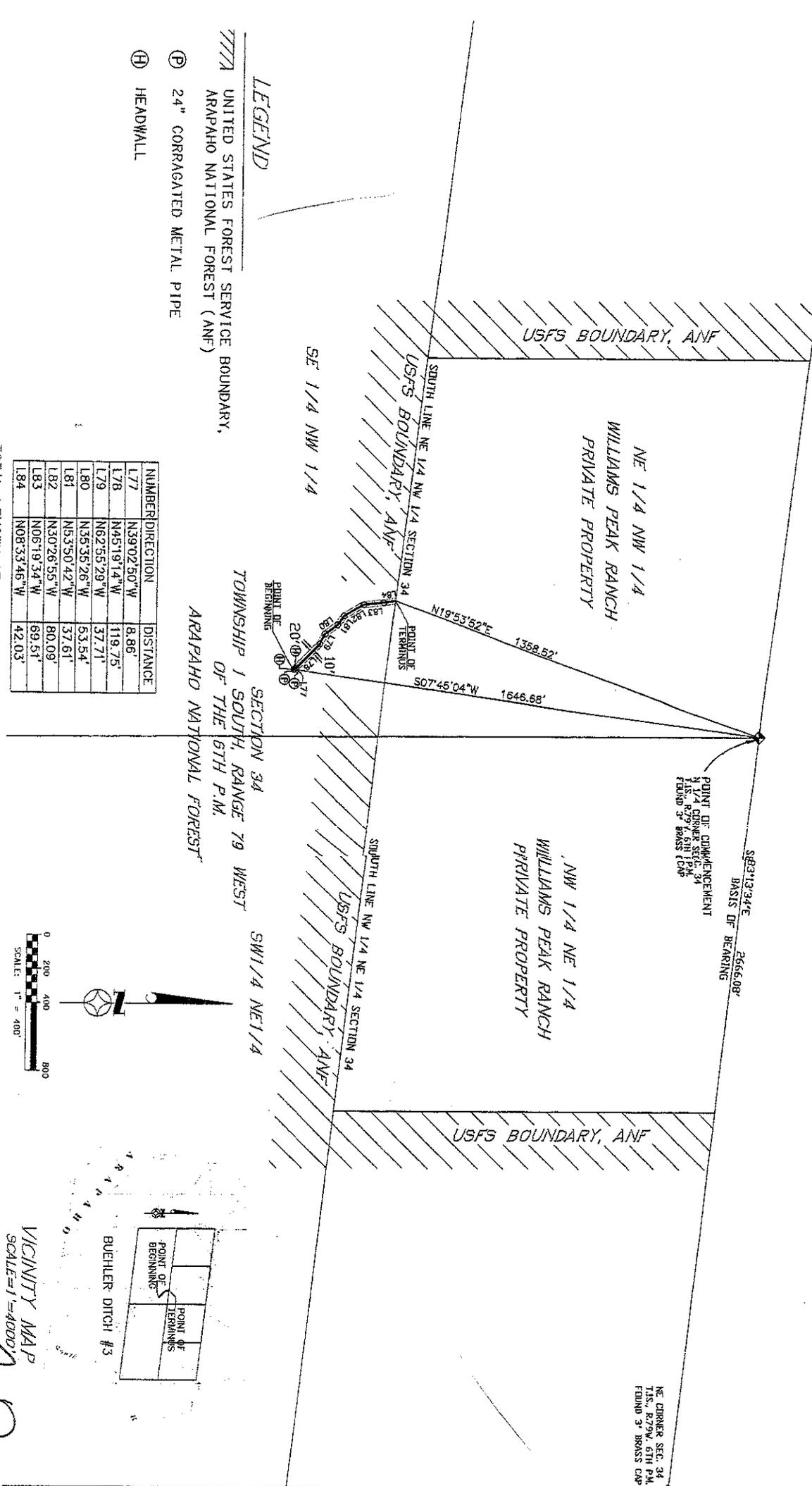
  
FOR RICHARD C. STEM  
Deputy Regional Forester  
Rocky Mountain Region, R-2  
Forest Service, Department of Agriculture

March 27, 2006  
Date

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# BUEHLER DITCH #3 EXHIBIT A

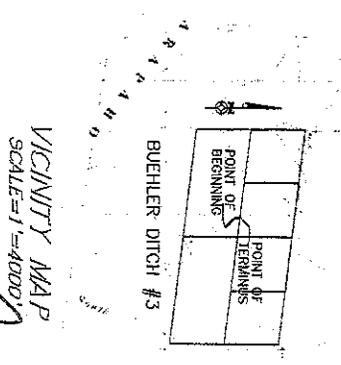
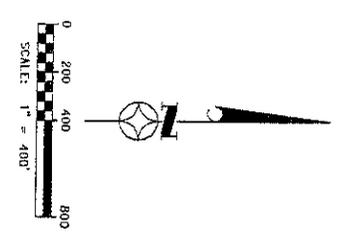
## SECTION 34, TOWNSHIP 1 SOUTH, RANGE 79 WEST OF THE 6TH P.M. COUNTY OF GRAND, STATE OF COLORADO



- LEGEND**
- //// UNITED STATES FOREST SERVICE BOUNDARY, ARAPAHO NATIONAL FOREST (ANF)
  - Ⓟ 24" CORRUGATED METAL PIPE
  - Ⓜ HEADWALL

| NUMBER | DIRECTION   | DISTANCE |
|--------|-------------|----------|
| L77    | N39°02'50"W | 8.86'    |
| L78    | N45°19'14"W | 118.75'  |
| L79    | N62°55'29"W | 37.71'   |
| L80    | N35°35'26"W | 53.54'   |
| L81    | N53°50'42"W | 37.61'   |
| L82    | N30°26'55"W | 80.09'   |
| L83    | N06°19'34"W | 69.51'   |
| L84    | N08°33'46"W | 42.03'   |

TOTAL LENGTH OF BUEHLER DITCH #3 ON USFS LAND=449.10'



PAGE 3 OF 3

NAME: *[Signature]*

DATE: *02/24/05*

ESLAND SURVEYOR REVIEW

|                   |   |
|-------------------|---|
| JOB NO.: 9734-005 | <h3>BUEHLER DITCH #3</h3> <h2>SECTION 34, T. 1 S., R. 79 W.</h2> <h2>CLIMAX MOLYBDENUM COMPANY</h2> |
| SCALE: 1" = 400'  |   |
| DATE: 08/19/05    |   |
| SURVEYOR: RD, NA  |   |
| DRAWN BY: AVV     |   |

**Western States SURVEYING, Inc.**

12753 S. PARKER ROAD, SUITE 205  
PARKER, COLORADO 80134-3486 (303) 841-7436

BUEHLER DITCH #3  
DESCRIPTION

An easement, 20 feet in width, for a ditch located across a portion of the Southeast 1/4 of the Northwest 1/4 of Section 34, Township 1 South, Range 79 West, of the Sixth Principal Meridian, County of Grand, State of Colorado. Said easement lying 10 feet on each side of a centerline of said ditch being more particularly described as follows:

NOTE: For the purpose of this description the bearings are based on the Henderson Mine and Mill coordinate system and are referenced to two monuments that bear South 83°13'34" East, 2666.08 feet and have the following descriptions:

N 1/4 COR. SEC 34 T1S R79W

2.5" diameter iron post with 3" diameter B.L.M. brass cap marked T1S R79W S27 S34 1958

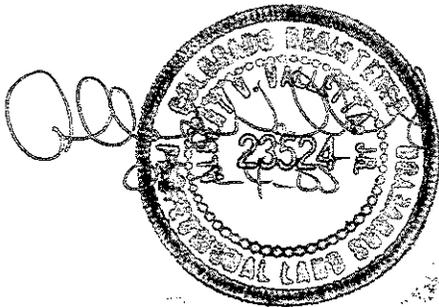
NE COR. SEC 34 T1S R79W

2.5" diameter steel post with 3" diameter B.L.M. brass cap marked T1S R79W S26 S27 S34 S35 1958

COMMENCING at the North Quarter Corner of Section 34, Township 1 South, Range 79 West; Thence South 07°45'04" West, 1646.68 feet, to the POINT OF BEGINNING; Thence North 39°02'50" West, 8.86 feet; Thence North 45°19'14" West, 119.75 feet; Thence North 62°55'29" West, 37.71 feet; Thence North 35°35'26" West, 53.54 feet; Thence North 53°50'42" West, 37.61 feet; Thence North 30°26'55" West, 80.09 feet; Thence North 06°19'34" West, 69.51 feet; Thence North 08°33'46" West, 42.03 feet to the South line of the Northeast Quarter of the Northwest Quarter of said Section 34 and the POINT OF TERMINUS from which the POINT OF COMMENCEMENT bears North 19°53'52" East, 1358.52 feet.

The sidelines of said easement are lengthened or shortened to begin perpendicular to the first course at the POINT OF BEGINNING and terminate at the South line of the Northeast 1/4 of the Northwest 1/4 of said Section 34. Contains 0.21 acres, more or less.

I hereby certify that the attached legal description was prepared under my direct supervision.



WSSI Job No: 9734-005

Date: 08/19/05 Rev.2

For and on Behalf of

WESTERN STATES SURVEYING, INC.

12753 South Parker Road, Suite 205

Parker, CO 80134

Albert V. Valletta, Jr., PLS 23524

NOTICE: According to Colorado Law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

