

**Decision Memo – USDA Forest Service
Climax Molybdenum Company
Agricultural Irrigation and Livestock Watering System Easement for
North Skylark 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 North Skylark Ditch. Conditions will be incorporated into the Easement by way of an Operation and Maintenance Plan and optional provisions. The North Skylark Ditch is located in the NW1/4NE1/4 Section 12, T2S, R79W, 6th 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 North Skylark Ditch is owned by Climax and operated by the Williams Peak Ranch under a sublease agreement, for agricultural and livestock irrigation on the Williams Peak Ranch. The ditch is 494.24 feet long, with 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 “left” bank of North Skylark Creek, and transported via the North Skylark Ditch to adjacent private lands. The diversion is an earthen structure that funnels water into a 24” corrugated metal pipe, and then into the ditch. The collecting end of the pipe has a slot for a headgate. The main stem of the creek flows through a second 24” culvert. There is a narrow, two-track road that runs more or less parallel to the ditch, from the private property boundary to the headgate. The road is drivable in its current condition, and has been used for many years to access the headgate. Use of the road will be authorized through the Easement Operation & Maintenance Plan. The water right associated with the North Skylark Ditch is 3 cubic feet/second. Water rights were appropriated on June 1, 1913 and adjudicated on November 7, 1952.

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 ditch, and its 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 .23 acre.

B. Relationship to Extraordinary Circumstances

There are no conditions that would constitute a significant effect on an extraordinary circumstance related to the proposed Easement. 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 a Biological Assessment were 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 downstream 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 Report 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 just east of the boundary of an Inventoried Roadless Area, as shown in the attached Exhibit B. It is identified as Roadless Area R21131-Copper

Mountain. Because this project area is outside the boundary of an Inventoried Roadless Area, the project will have no effect on this circumstance.

6. Native American Religious or Cultural Sites, or Areas – The North Skylark 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.

To be in compliance with the terms of the Ditch Bill Easement the diversion structure may need to be replaced with an operable headgate, capable of controlling the amount of water flowing into the system, or the existing headgate may need improvement. The Forest Archaeologist has determined that no further consultation would be needed if and when a new headgate is installed or if the existing one is improved.

III. OTHER RESOURCES CONSIDERED

A. Invasive species

No evidence of invasive species were found within the North Skylark Ditch right-of-way, although inspection was made in early spring, when remnant plants may not have been visible. The Holder will be required to inspect the ditch and headgate area for invasive species. The Easement will contain conditions concerning prevention and management of invasive weed species. These conditions govern use of certified weed-free seed, hay and mulch, treatment of invasive species, and cleaning of any equipment brought to the site to be sure it is free of invasive plant species.

B. Soil Erosion

The North Skylark Ditch and diversion areas were examined for erosion problems. There are some locations along the ditch where the banks are trampled down by livestock on the Skylark Grazing Allotment, nearly obliterating the ditch profile. To improve water flow, the Holder and the Forest Officer should work with the grazing permittee to reduce the trampling of the banks, so that the Holder can make effective repairs to the ditch profile, and improve water flow.

C. Access

There is a two-track road that leads from adjacent private land to the North Skylark Ditch diversion. It has been used for many years to access the headgate. The road is old and was probably originally constructed for access to the ditch. There is no public access to it and it is not a National Forest System Road. It is drivable by All Terrain Vehicle (ATV), pickup truck or small heavy equipment.

Because the road is not a National Forest System Road, and is not designated for motorized use for general Forest access, motorized access will be limited to necessary maintenance and operation of the ditch, and no improvement to the road will be allowed without prior approval. Use of ATV's would be encouraged over use of a full sized pickup truck. These guidelines will be included in the Operation and Maintenance Plan made part of the Easement. The Holder would not be allowed motorized access on this route for any other purpose, such as hunting, camping or firewood cutting. No additional roads are needed for access to the ditch. This road will be managed as a classified private road for access to the North Skylark Ditch.

IV. SCOPING

Processing of Sulphur Ranger District Ditch Bill Easements was listed in the 2nd and 3rd 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 North Skylark 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 North Skylark 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 value and aesthetics will be protected in 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 North Skylark Ditch meets the eligibility requirements for an Easement under this authority. There is a headgate at the diversion point, but the Holder needs to inspect the gate to be sure a metal plate can be inserted to control the flow of water.

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 Wildlife 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 by sublease, of the North Skylark 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 North Skylark Ditch provides agricultural irrigation to those lands. The North Skylark 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 management 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 minimal dust created from operation and maintenance 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.

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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SKYLARK NORTH DITCH
DESCRIPTION

An easement, 20 feet in width, for a ditch located across a portion of the Northwest 1/4 of the Northeast 1/4 of Section 12, Township 2 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 North 89°59'40" East, 2707.27 feet and have the following descriptions:

1/4 COR. SEC 1/12 T2S R79W – A.P. 30 ES 375 – A.P. 14 TRACT 37

2.5" diameter iron post with 3" diameter B.L.M. brass cap marked T2S R79W S1 S12 1968

A.P. 29 ES 375 – A.P. 13 TRACT 37

2.5" diameter steel post with 3" diameter B.L.M. brass cap marked T2S R79W AP 29 ES 375 AP 13 TR 37 1968

COMMENCING at the Quarter Corner between Sections 1 and 12, Township 2 South, Range 79 West;

Thence South 07°21'27" East, 202.28 feet, to the POINT OF BEGINNING;

Thence North 86°17'00" East, 23.81 feet;

Thence North 84°26'29" East, 40.91 feet;

Thence North 35°48'21" East, 27.74 feet;

Thence North 55°43'15" East, 41.23 feet;

Thence North 67°37'13" East, 38.40 feet;

Thence North 89°40'02" East, 24.28 feet;

Thence North 87°31'27" East, 98.59 feet;

Thence North 74°09'29" East, 26.51 feet;

Thence North 34°48'13" East, 42.40 feet;

Thence North 78°31'13" East, 16.44 feet;

Thence North 69°14'10" East, 23.98 feet;

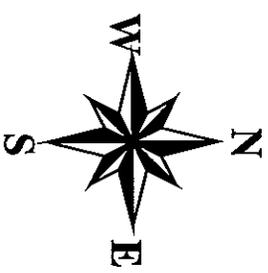
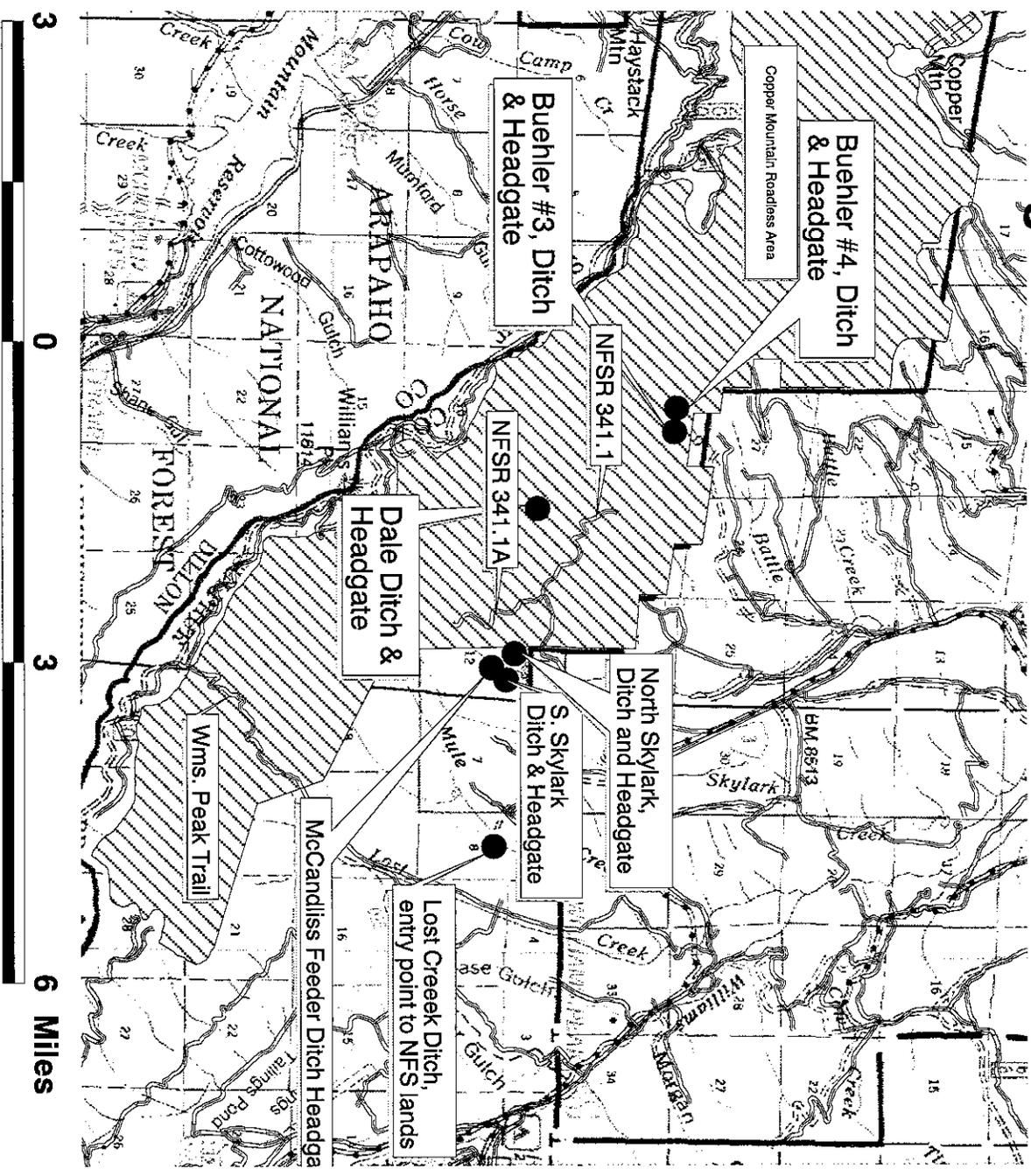
Thence North 57°41'37" East, 20.84 feet;

Thence North 20°10'01" West, 49.63 feet;

Thence North 14°34'53" East, 19.48 feet to the South line of Tract 37 and the POINT OF TERMINUS from which the POINT OF COMMENCEMENT bears South 89°59'40" West, 392.60 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 Tract 37. Contains 0.23 acres, more or less.

Exhibit B Roadless Area Boundary & Headgate Locations



All trans
Roadless 3 2001