

Decision Memo and Categorical Exclusion

Colorado Ditch Bill Easements Rio Grande National Forest March 28, 2006

Proposed Action/Decision

The Colorado Ditch Bill (43 U.S.C. 1761(c)) was passed in 1986 as an amendment to the 1976 Federal Land Policy and Management Act (FLPMA). It was intended to provide a permanent easement for agricultural (irrigation and livestock) water diversion facilities. This applies to water systems in existence prior to Oct. 21, 1976, and applications had to have been filed by Dec. 31, 1996.

The Rio Grande National Forest received 87 Ditch Bill Easement applications prior to December 31, 1996. The Forest is required to evaluate all 87 applications to determine eligibility for Agricultural Irrigation and Livestock Watering Easements, commonly known as "Ditch Bill" easements. For those that are eligible, the Forest Service is required to issue easements according to the Colorado Ditch Bill.

The Rio Grande National Forest has reviewed twenty-six Ditch Bill Easement applications and has concluded at this time that facilities for eighteen applications listed in Table 1 meet all nine eligibility criteria. The remaining 8 either have been abandoned or are on private land or the applicant wants to pursue an 1866 right. The eligibility criteria are provided in Forest Service Manual (FSM) 2729.16d, paragraph 11 and listed in Appendix C. Documentation that the eligibility criteria are met is available in Forest 2720, Special Use files.

One criteria of special interest to the public has been the water right information. Table 2 shows the amount of water that has been appropriated for each facility, as well as the appropriation date and, as a comparison, the date that part of the Forest was reserved.

The Forest Service has no discretion over whether to issue these easements to applicants who qualify; consequently authorizing the easement does not require disclosure under the National Environmental Policy Act (NEPA). The Forest Service does have discretion to include additional terms and conditions in the easement and to attach an operating and maintenance plan to be made a part of the easement. It is for the purpose of identifying those terms and conditions to be included that an environmental analysis is being done. Terms and conditions for the ongoing operation and maintenance of qualifying facilities are added when necessary to comply with State and Federal law.

The USDA Easement format and clauses have been standardized and approved nationally for our use. The exact language has been reviewed by our Office of General Counsel (OGC) and may not be changed without going back for additional OGC review and approval. The Operation and Maintenance Plan (O&M Plan) follows the national format as well, with the inclusion of some general provisions to address local threatened or endangered species (TE). Specific provisions that have been added to the Rio Grande National Forest O&M Plans require prior approval by the Forest Officer if:

- 1) Dense vegetative willow stands along streambanks are disturbed.
- 2) Vegetation is removed within the ditch channel before May 1 or after August 15.
- 3) More silt from the ditch channel is removed than is necessary to maintain the authorized capacity.
- 4) Silt that is deposited on the National Forest is not evenly distributed with a maximum thickness of 1 inch or is deposited in natural water courses or in standing water pools. (This is needed to ensure rapid re-vegetation and protection of Boreal Toads.)
- 5) Pesticides are applied.

These additional provisions are not absolute restrictions, but must be reviewed by the Forest Officer before they are allowed in order to ensure that Threatened and Endangered Species are fully protected. In addition, The LeDuc Ditch owners would need to provide an annual report of maintenance activities to the Forest Service to ensure that all provisions in the O&M plan are being followed consistently, because willow stands near the mouth of that ditch meet the definition for Southwest Willow Flycatcher habitat.

These additional provisions were developed during informal consultation with the US Fish and Wildlife Service and are part of their concurrence with the Biological Assessment's determination of "Not Likely to Adversely Affect".

For evaluating effects, under NEPA, the baseline condition includes the water development facility and the environmental conditions that exist as a result of the effects of its current use, operation, and maintenance according to FSM 2729.16. Conditions attached to the O&M Plans prevent any further land disturbance than what has already occurred and existed prior to 1976. Off-site damage to NFS lands must be repaired according to the O&M Plan. **No additional disturbance activity is authorized by these easements and their O&M Plans.**

This decision is categorically excluded from documentation in an Environmental Assessment or Environmental Impact Statement pursuant to Forest Service Handbook (FSH) 1909.15, 31.2. All facilities included in this categorical exclusion (CE) are covered by two categories in this handbook section: Category 3: "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land" and Category 15: "Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the

authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.” This decision groups all facilities in Table 1 because they all meet these two CE categories and both categories are handled the same way for addressing the NEPA.

These water diversion facilities have been on the National Forest for decades. The easement and operations/maintenance plan will only allow these water diversion systems to operate as they have operated in the past and will not allow any additional land disturbance. As a result there are no extraordinary circumstances, as defined by FSH 1909.15, Chapter 30, for any of these water systems.

The Ditch Bill Easement applications and project area are listed in Table 1. All facilities in the table are located in Colorado, on the Rio Grande National Forest and are shown in Figure 1.

APPLICATION	WITHIN WILDERNESS	RANGER DISTRICT	LEGAL DESCRIPTION	STREAM	CE CATEGORY
Bristol Head Res.#2 enlrg *	NO	Divide	S2, T40N, R2W	Seepage Creek	3
Cliff Creek Reservoir	NO	Divide	SW ¼, NE ¼, S15 T40N, R 2W	Cliff Creek	3
Inglewood Ditch *	NO	Saguache	SW ¼, NW ¼, S8 T43N, R12E	Burnt Gulch Creek	3
Jamarillo Spring Stock Pond	NO	Conejos Peak	NE ¼, S21 T32N, R6E	Rio de los Pinos	3
Kitty Creek Diversion *	NO	Divide	NE ¼, S6, T38N, R2E	Kitty Creek	3
LeDuc Ditch & Enlargement * Two owners/applicants for LeDuc Ditch and one for the Enlargement	NO	Conejos Peak	NW ¼, S33 T33N R7E	Conejos River	3
Medano Ditch *	NO	Conejos Peak	SW SE S21 T25SR72W	Medano Creek	15
Raspberry Gulch #1	NO	Divide	SW ¼, SW ¼., S23, T40N, R2E	Raspberry Gulch Creek	3
Raspberry Gulch #2 *	NO	Divide	SW ¼, SW ¼., S23, T40N, R2E	Raspberry Gulch Creek	3
Trout Lake Res *	YES	Divide	S1, T39N, R3W	Trout Creek	15
Troutvale (Brown) Res*	NO	Divide	S10, T41N, R3W	South Clear Creek	15
Troutvale Ditch *	NO	Divide	S10, T41N, R3W	Porcupine Gulch	15 or 3
Wee Ruby Reservoir & Ditch * 3 Owners/Applicants	NO	Divide	SWS19 & NWNWS30T 40NR2W	Texas Creek	15
Woodfern Ditch	NO	Divide	NE ¼, NW ¼, NW ¼, S15, T40N, R2W.	Woodfern Creek	3

* These facilities have been reviewed under the court decree for Federal Reserved Instream Water Rights as described in Case No. 81-CW-183, District Court, Water Division 3, State of Colorado.

*District Court, Water Division No. 3, State of Colorado, Case No. 81-CW-183 provides comprehensive in-stream flow protection for virtually all Rio Grande National Forest streams. Relevant findings in the Decree include: 1) (Paragraph 16) “On the basis of information as of the date of this decree..., the signatories to this decree agree that the instream flows decreed to the United States herein also satisfy fully any need for instream flows in the Gunnison and Rio Grande National Forests in Water Division No. 3...”. 2) (Paragraph 19) “This decree may be reopened if the U.S.D.A. Forest Service, in the exercise of its power to grant or deny land use authorizations on National Forest System lands within Water Division No. 3, acts to increase or maintain stream flows...”.

Files with detailed information for each of these facilities are available in the Rio Grande National Forest Supervisor’s Office in Monte Vista, Colorado, under file code 2720. These files are incorporated into the project record by reference here.

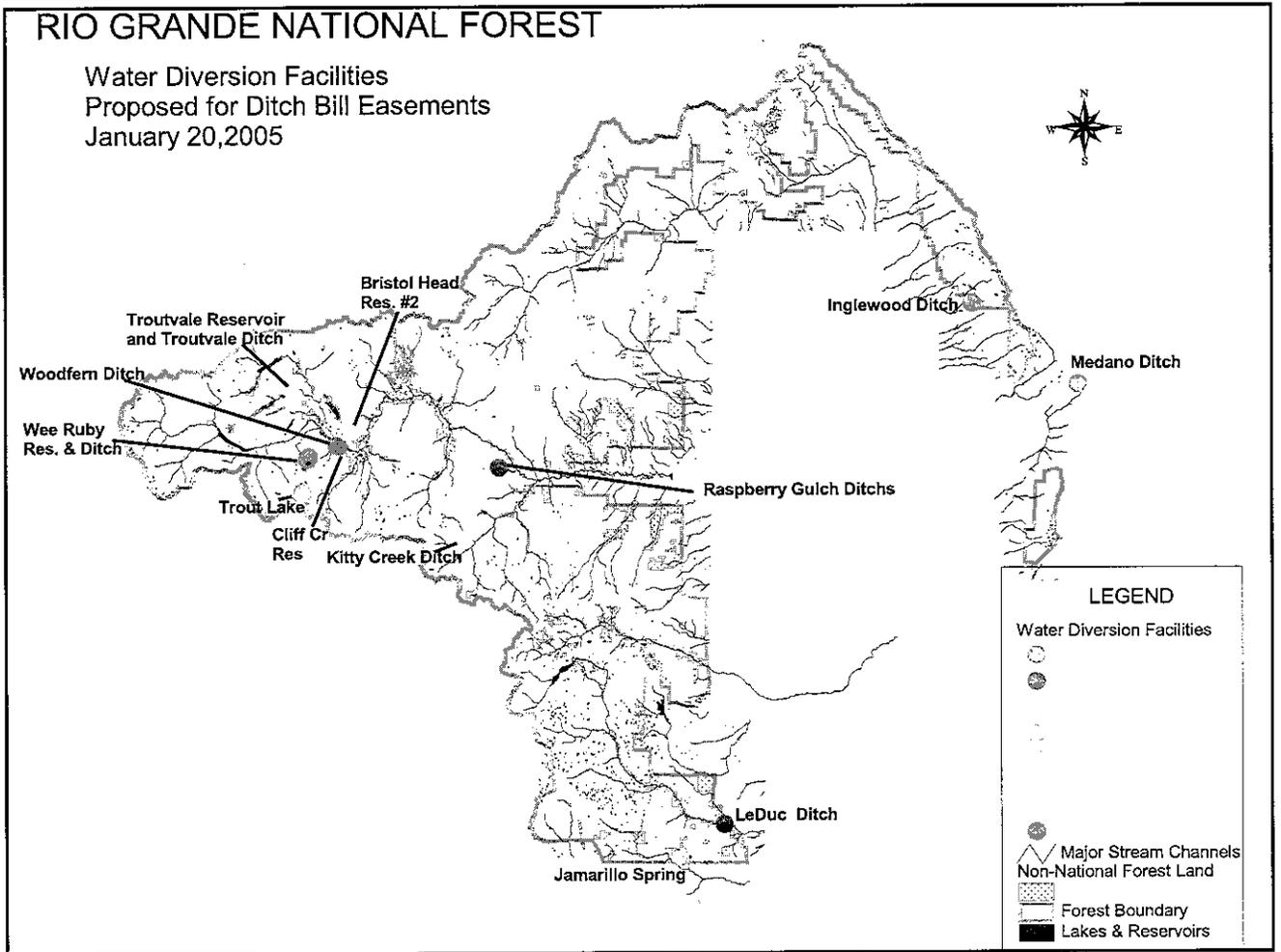
An important part of that site-specific information for much of the public is when the structures were built, when the water was first put to beneficial use and, as a comparison, when the National Forest land was reserved. Table 2 provides that information.

Table 2

Facility	Water Right Appropriation Date	Water Right Quantity	National Forest Reserve Date
Bristol Head Res.#2 enlrg	5/9/1928	470.57af	3/2/1907
Cliff Creek Reservoir	8/2/1956	110.75 af	3/2/1907
Inglewood Ditch	5/31/1915	2.0 cfs	4/11/1902
Jamarillo Spring	5/15/1873	.033cfs	3/2/1907
Kitty Creek Diversion	5/01/1900	10.0 cfs	6/3/1905
LeDuc Ditch	4/21/1883	3.0 cfs	3/27/1907
LeDuc Ditch Enlrg	5/01/1889	1.0 cfs	3/27/1907
Medano Ditch	9/22/1892	15.0 cfs	6/12/1905
Raspberry Gulch #1	5/1/1903	2.0 cfs	6/3/1905
Raspberry Gulch #2	5/31/1903	2.0 cfs	6/3/1905
Trout Lake Res	8/19/1931	198.44 af	6/3/1905
Wee Ruby Reservoir	7/17/1934	186.245af	6/3/1905
Woodfern Ditch	6/1/1888	3.2 cfs	3/2/1907
Troutvale (Brown) Res	9/1/1911	510 af	6/3/1905
Troutvale Ditch	9/1/1911	2.5 cfs	6/3/1905

- cfs = cubic feet per second
- af = acre-feet

Figure 1.



Resource Protection and Mitigation

Appendix A and B include the standard easement and operation/maintenance plan, respectively. Resource protection and mitigation requirements included in those documents can be seen in those appendices.

In summary, each easement and operation/maintenance plan will have standard requirements that ensure compliance with applicable Federal, State, and local laws, regulations, and standards.

The holder must notify, consult with, and obtain concurrence from the Forest Service for operation and maintenance of the authorized facilities. If operation and maintenance activities are proposed beyond what is authorized in the standard easement and operation/maintenance plans, the holder must get approval from the Forest Service, which could require additional NEPA analysis, if the proposed activities are outside the scope of this existing analysis. Situations that would require prior Forest Service approval are included in the Operation/Maintenance Plan.

The holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.

All operation/maintenance plans address the following:

- 1) Limit access across National Forest System (NFS) lands to routes approved by the Forest Service.
- 2) Prevent erosion and damage to NFS lands, require re-vegetation of disturbed surfaces, prevent spread of noxious weeds and ensure protection of natural channels.
- 3) Require annual inspections and necessary repairs.
- 4) Require complete protection of archaeological, paleontological, or historic values.

Scoping and Public Involvement

Scoping and public involvement for this project was accomplished by publication in the Rio Grande National Forest "Schedule of Proposed Actions" and publication of a public notice regarding the proposed action and an opportunity to comment in the "Valley Courier", the newspaper of record, on January 18, 2005. Scoping was also accomplished through a public meeting in Alamosa with Forest Service and State of Colorado officials on September 16, 2005. Rio Grande Water Conservation Board quarterly meetings were also used to keep the public informed and to get comments: attendees at the January 2005 meeting are included in the project record. Letters were also sent to each applicant, to Trout Unlimited, the Rio Grande Water Conservation Board, the Colorado Division of Water Resources, and to over 40 tribal representatives. Written comments were requested by January 26, 2005. No written comments were received. Some verbal comments were received but only at a Rio Grande Water Conservation Board meeting.

Concerns Raised verbally through Scoping and Forest Service Response

- 1. Concern was raised over conditions that will be attached to the Operations and Maintenance Plan. Specific concerns were expressed against attaching conditions that would limit an applicant's historical use of water.*

FS response: These water diversion systems have been in place for many decades. Their continued operation is allowed by law, as long they do not increase capacities or change conditions that existed prior to 1976. The operation and maintenance of these systems will be defined in an Operation and Maintenance Plan that will allow the systems to be operated and maintained in the same way that they have been historically and will prevent additional land disturbance. The Forest was granted instream flow water rights in Water Division 3, Case No. 81-CW-183. On the basis of information in that decree, all decreed water rights on the National Forest were determined to not have any material adverse impact on the adequacy of the instream flow water rights to fully satisfy the purposes for which the Forest was established.

- 2. Concern was expressed over how the Forest would handle trans-mountain diversions where the actual stream diversion is on an adjacent Forest.*

FS response: The Rio Grande National Forest will work with the adjacent Forest in processing applications for trans-mountain diversions. We will work with the adjacent Forest to ensure that ditches extending onto the Rio Grande National Forest are covered by a Ditch Bill Easement, if they meet the eligibility criteria.

- 3. Appreciation was expressed to the Forest Service for the way that these easements are being handled.*

FS response: The Forest Service is working closely with each applicant. If it appears that a water diversion system has been abandoned or is located solely on private land, we are getting concurrence from the applicant before discarding the application. Where information is insufficient to document eligibility for Ditch Bill Easement criteria, the Forest Service is taking the time to request the additional information.

Reasons for Categorically Excluding the Proposed Action

The proposed action is categorically excluded according to FSH 1909.15, Section 31.2 under categories of actions for which a project or case file and Decision Memo are required. The proposed actions fall under categories 3 and 15. Category 3 is appropriate for those facilities listed in Table 1 that cover less than 5 acres of National Forest System lands and will have no additional land disturbance. Category 15 is appropriate for those facilities that have a prior authorization that is not expanded with this new authorization.

No extraordinary circumstances were determined to exist for these historical water diversion systems as defined in FSH 1909.15, Chapter 30 Section 30.3. While different

water diversion systems fall within habitat ranges for lynx, bald eagle, and Southwestern willow flycatcher, which are federally listed TE species, the issuance of these easements and operation/maintenance plans are expected to have no adverse effects on those species. The Biological Assessment determination of “no effect” has been made for the Mexican spotted owl and Uncompahgre fritillary butterfly and of “may affect, not likely to adversely affect” for the bald eagle, Canada lynx, and Southwestern willow flycatcher (Programmatic Biological Assessment, Ditch Bill Easement Applications, Rio Grande National Forest, by Laurel Kagan Wiley – Wildlife Program Manager, January 20, 2005). US Fish and Wildlife Service concurrence to this Biological Assessment was received by letter, dated April 4, 2005. Such letter is part of the project record.

The project is fully consistent with the Lynx Conservation Assessment Strategy. The mere presence of designated habitat for a TE species does not constitute an extraordinary circumstance. Special provisions are included in the O&M Plans to prevent impacts on potential TE habitat. (See Page 2)

The project was put through the following screens to determine if the use of a CE is appropriate:

Are there any resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action would warrant further analysis and documentation in an EA or EIS?

a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing, or proposed critical habitat, or Forest Service sensitive species?

No new land disturbance that could impact special status species or critical habitat would be authorized with the issuance of these easements and operation/maintenance plans. The existing water diversion structures are considered the baseline condition for this environmental analysis and no additional land disturbance is allowed by the easements or operation and maintenance plans. The fact that no new disturbance is allowed outside the existing disturbance prism enabled the Forest Biologist and Ecologist to write Biological Assessments (BAs) with conclusions that there would be no adverse effects to these species or their habitat. These BAs are part of the project record.

b. Flood plains, wetlands or municipal watersheds?

None of these water diversion systems are in a municipal watershed. Stream diversions are located within stream channels that do contain a flood plain. Any impact on a flood plain has been occurring over time as part of the historical operation of these systems, which is considered the baseline condition for this analysis, and no additional impacts are authorized.

c. Congressionally designated areas, such as wilderness, wilderness study areas or National Recreation Areas?

One of these historical systems (Trout Lake Reservoir) is located within a designated wilderness (the Weminuche Wilderness Area). This structure was built in 1932, so it has existed for 75 years. The Weminuche Wilderness Area was designated as such in 1975. The existing disturbance associated with Trout Lake Reservoir is part of the baseline condition for this analysis. No additional disturbance or activity would be authorized, consequently no actions are proposed that could impact or be incompatible with wilderness designation.

d. Inventoried roadless areas?

One site (Wee Ruby Reservoir) is within an inventoried roadless area. However, the existing disturbance associated with Wee Ruby Reservoir is part of the baseline condition for this analysis. No additional disturbance or activity is authorized at this time, consequently no actions are proposed that could impact or be incompatible with inventoried roadless areas. If actions are proposed in the future that would result in new disturbance, the action would require additional NEPA analysis and authorization.

e. Research Natural Areas?

None of the water diversion facilities included in this analysis lies within Research Natural Areas (RNAs). RNAs are management prescription 2.2 in the Rio Grande National Forest land management plan and can be seen on the Alternative G map for the Plan. No additional impacts would be allowed in a research natural area without additional NEPA compliance and authorization.

f. Native American religious, cultural sites, archaeological sites, historic properties or areas?

Cultural resource assessments and tribal consultation were completed for this project. There are no known American Indian or Alaska native religious or cultural sites. If any items of archaeological, paleontological, or historic value, including but not limited to historic or prehistoric artifacts, structures, monuments, human remains and funerary objects (grave goods), are discovered, the Easement Holder shall immediately cease all activities which may disturb such items and notify the Forest Service. Any land disturbance in addition to what has occurred historically would require additional archaeological inventory.

Regional direction states that “When no known significant heritage sites are present within the easement area, no significant heritage sites are suspected, and no new ground disturbance is proposed or authorized by the O&M Plan, then the undertaking has not potential to affect significant resources (36CFR800.3(a)(1)). No further work is required until/unless easement holder proposes a change in use or maintenance and operation.”

For each site the Forest Archaeologist concluded, “No additional inventory is required as site potential is considered low and no new ground disturbance is proposed or authorized by the Operation & Maintenance Plan.”

Findings Required by Other Laws

I find that this activity is consistent with the Rio Grande National Forest Land and Resource Management Plan, as amended (Forest Plan). This project will comply with Forest Plan direction (*Forestwide Objectives, Page II-2, Objective 2.2, Page II-3, Objective 2.10 and 3.3; Forestwide Standards and Guidelines, Page III-25, Guideline 4*).

Based on the fact that scoping produced no written comments or concerns and that no extraordinary circumstances have been identified, the issuance of these Ditch Bill Easements and associated Operation/Maintenance Plans is not considered a significant action for NEPA compliance. There will be no significant adverse effects on consumers; civil rights; minority groups or women; prime farmland, rangeland, forest land, wetlands or floodplains; threatened and endangered species; cultural resources; air or water quality.

Decision

I have decided to issue easements and operation/maintenance plans for the water diversion systems listed above. I have considered public and internal scoping comments. The project falls under categories 3 and 15 for a CE. The effects are expected to be minor and there are no extraordinary circumstances related to the proposed action. The operation and maintenance plans do not authorize any additional activities or land disturbances beyond what has already occurred from these historical facilities authorized through the Colorado Ditch Bill. The issuance of easements and operation/maintenance plans complies with the direction in the 1996 Forest Plan, as amended. Furthermore, I have found the following:

1) A Biological Assessment/Biological Evaluation was completed to identify any Threatened, Endangered, Proposed or Sensitive wildlife species or wildlife related concerns. No adverse effects were identified. The Biological Assessment determination of “no effect” has been made for the Mexican spotted owl and Uncompahgre fritillary butterfly and of “may affect, not likely to adversely affect” for the bald eagle, Canada lynx, and Southwestern willow flycatcher.

Determinations of “No Impact” or “May Impact Individuals, but is not likely to cause a trend towards Federal listing or result in loss of viability in the planning area” for sensitive species was made (Programmatic Biological Evaluation and MIS Report, Laurel Kagan Wiley – Wildlife Program Manager, March 30, 2005).

The Forest must also evaluate effects of actions on migratory birds. Since impacts associated with operation and maintenance of these water diversion facilities will not exceed what has happened historically, no new impacts will occur to migratory birds (Migratory Bird Management Considerations Report, Laurel Kagan Wiley – Wildlife Program Manager, March 30, 2005).

2) A Biological Assessment/Biological Evaluation for plants was completed to evaluate impacts on Threatened, Endangered, Proposed or Sensitive plant species. No adverse effects were found. Since no additional land disturbance is authorized, there will be no direct, indirect or cumulative impacts on Threatened, Endangered, Proposed or Sensitive plant species.

A determination of "No Effect" was made for Federally listed and proposed plant species and a "No Impact" determination was made for Forest Service designated Sensitive plants (Memo dated January 26, 2005, file code 2670, by Dean Erhard, Forest Ecologist).

3) Heritage resource assessments were conducted in the project area. No sites were identified (Rio Grande National Forest Heritage Resource Report, Ditch Bill Easements, by Vince Spero – Forest Archaeologist).

Implementation Date

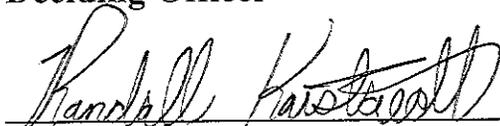
Issuance of the easements and operation/maintenance plans may occur immediately; although, implementation is not likely to occur prior to April 1, 2006.

Appeal Opportunities:

This decision is not subject to appeal pursuant to 36 CFR 215.4(a).

For additional information concerning this decision or the Forest Service appeal process contact Les Dobson, 1803 West Highway 160, Monte Vista, Colorado 81144. Phone Number: 719-852-5941.

Deciding Officer



Date March 31, 2006

FOR

Richard Stem
Deputy Regional Forester
Rocky Mountain Region, R-2
Forest Service, Department of Agriculture

Appendix A: Standard Easement

Authorization ID: #AUTH_ID#
Contact ID: #HOLDER_ID#
Use Code: #USE_CODE#

FS-2700-9a (08/04)
OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT
AUTHORITY:
#AUTHORITY_NAME#

THIS EASEMENT issued this day of Month/Year by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called the grantor, to #HOLDER_NAME# a Person/corporation/other entity of the State of State hereinafter called the holder(s).

The Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P. L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the National Forest, in the County(ies) of Name, State of Name. The description of the authorized facilities is as follows:

Project Name: <name of ditch, reservoir, etc.; water right number is optional>

Location (legal description): Insert Principle Meridian and State Name>

Description of Improvements: #PURPOSE#

Length of Easement (for linear featured facilities):

Width of Easement (for linear featured facilities):

Area of National Forest Lands Occupied (acres associated with either linear or non-linear features, such as reservoirs): #USE_ACRES#

Upon acceptance of this easement the holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

The United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities of lands Insert...as shown on the map (plat) or specifically described by a centerline description contained in Exhibit , attached hereto and incorporated herein, as provided by the holder and hereby accepted by the authorized officer.

This easement is issued subject to the following terms, provisions, and conditions applicable to the holder, its permittees, contractors, assignees, and successors in interest.

1. Authorized Use. This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.

2. Extensions or Enlargements. This easement does not authorize extensions or enlargements of the water conveyance system.

3. Fees. This easement is issued free of charge.

4. Transferability. This easement is fully transferable provided the water conveyance system facilities are used for agricultural irrigation or livestock watering. The holder shall notify the grantor within sixty (60) days of any address change or change in ownership.

5. Tenure. This easement shall continue for as long as the above described lands and water conveyance system facilities are used, operated, and maintained in accordance with the terms and conditions herein described.

6. Operation and Maintenance.

a. The holder agrees to operate and maintain the facilities and use the authorized easement in accordance with applicable Federal, State, and local laws, regulations, and standards.

b. The holder shall notify, consult with, and obtain concurrence of the grantor for operation and maintenance of the authorized facilities.

c. The holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.

d. The holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the grantor.

e. Pursuant to the requirements of 36 CFR 251.56(b)(1)(v), the terms and conditions for operation and maintenance set forth in this section, and any operations and maintenance plan incorporated in this easement pursuant to paragraph (f) of this section, may be revised or modified by the authorized officer upon determination that:

1. Modification or revision of such terms and conditions is necessary to comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*) or applicable State or Federal law.

2. Terms and conditions contained herein are no longer needed to comply with the requirements of applicable State or Federal law.

[] f. The holder agrees to operate and maintain the facilities and use the authorized easements in accordance with the attached operation and maintenance plan.

7. Emergency Repairs.

a. Except for emergency repairs required to protect the environment, property of the United States, or public health and safety, the holder may not use materials on National Forest System lands outside the easement prior to obtaining written authorization and paying for the materials to be used. The holder's use of material within the easement is limited to maintenance of the water conveyance system facility.

b. If the water conveyance system facilities authorized by this easement are allowed to deteriorate to the point of threatening persons or property, and the holder, after notification by the grantor, refuses to perform the repairs and maintenance required to remove the threat to persons or property, the grantor shall have the right to undertake such repair and

maintenance and to assess the holder for the costs of such repair and maintenance, regardless of whether the grantor had required the holder to furnish a bond or other security.

8. Indemnification.

a. The holder assumes all risk of loss to the authorized improvements.

b. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

9. Liability. The holder shall be liable for all injury, loss, or damage, including fire suppression, or other costs in connection with rehabilitation or restoration of natural resources associated with the use and occupancy authorized by this easement. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs in connection therewith.

10. Site Restoration. The holder shall, upon termination or revocation of this easement, stabilize the site as required by the grantor. If the holder does not stabilize the site, the holder agrees to pay the costs of such stabilization if undertaken by the grantor.

The foregoing notwithstanding, this easement is granted subject to the following reservations by the grantor, for itself, its permittees, contractors, and assigns.

11. Nonexclusive Use. The grantor reserves the right to use or permit others to use the easement area, provided such use does not unreasonably interfere with the rights and privileges hereby authorized.

12. Revocation and Termination. The grantor may take action to revoke this easement pursuant to 7 CFR 1.130 through 1.151 for noncompliance with applicable statutes or regulations or the terms and conditions of this easement. This easement also may be revoked with the consent of the holder, or if the holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement also terminates according to its terms if the holder uses the water conveyance system for any purpose other than agricultural irrigation or livestock watering.

ACCEPTANCE On this _____ day of _____, I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.

Type in Holder Name

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,

By: _____

Notary Public

My commission expires: _____

The Secretary of Agriculture by the [Deputy] Regional Forester, Forest Service, has executed this easement pursuant to delegations of authority specified in 7 CFR 2.60 and 36 CFR 251.52 on the day and year written above.
UNITED STATES OF AMERICA

Regional Forester/Deputy
Region Name Region
Forest Service, Department of Agriculture

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing a managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archaeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Appendix B: Standard Operation and Maintenance Plan

OPERATION AND MAINTENANCE PLAN

Water Conveyance Facility: _____

Easement Holder : _____

The easement incorporates this Operation and Maintenance Plan (O & M Plan) and any attachments thereto; and the Holder agrees to operate and maintain the facilities and use the granted land in accordance with the following stipulations:

1. Regulate channel flows so that a freeboard is maintained above the water line.
2. Use only maintenance routes agreed to and to repair all damage resulting from said use.
3. The Holder shall: be responsible for prevention and control of soil erosion and gulying on land covered by the easement and the land adjacent thereto, resulting from operations and maintenance of granted use; maintain channel to prevent downcutting and bank failure; remove all obstructions from the channel; revegetate or otherwise stabilize all ground where the soil has been exposed; be responsible for control of and spread of noxious weeds, as indentified by the US Forest Service and the local County weed list.
4. The Holder shall inspect the facility prior to use each year and make necessary repairs. Work that is considered other than routine maintenance and/or minor repairs shall be discussed in advance with the Forest officer. All repairs shall be acceptable to and completed by the date agreed to by the Holder and the Forest officer.
5. The Holder will contact the Forest officer for approval before proceeding with work that is other than routine operations. Some of these situations are:
 - a. Bringing in and using heavy equipment.
 - b. Using other than approved maintenance routes for access.
 - c. Motorized use in a closed area in an emergency situation.
 - d. Removal of significant amounts of vegetation and deposition of the same, if on National Forest System lands. Existing dense vegetative willow stands along streambanks will not be disturbed. Removal of vegetation within the ditch channel must occur prior to May 1 or after August 15.
 - e. Removal of significant amounts of silt and deposition of the same, if on National Forest System lands. Silt may be removed from the ditch channel in order to

Appendix C: Eligibility Criteria

- 1) The water system must have been constructed and in operation prior to October 21, 1976.
- 2) The system or portion of system submitted by applicant is not an enlargement or extension constructed after October 21, 1976.
- 3) The Forest Service lands involved must be in a state, like Colorado, where the prior appropriation doctrine governs the ownership of water rights
- 4) The water system must be used solely for agricultural irrigation or livestock watering purposes, but can include incidental domestic use.
- 5) The uses served by the water system must not be located solely on federal lands.
- 6) The originally constructed facilities comprising the water system must have been in substantially continuous operation without abandonment.
- 7) The applicant must have a valid existing right established under state law for the water to be conveyed by the water system.
- 8) The system is identifiable by a recordable survey. Recordable survey, as used in the act is one which allows the authorized officer to locate the water conveyance system facilities on the ground, and allows the authorized officer to post the water conveyance system facilities on the Forest Service land status records. There is no statutory requirement that the survey be recorded.
- 9) The applicant must be submitted on or before December 31, 1996.