Decision Memo
Agricultural Irrigation and Livestock Watering System Easements for 7 Facilities Under the Colorado Ditch Bill Act of 1986

Medicine Bow-Routt National Forests
Region 2, USDA Forest Service

I. Background

The Act of October 27, 1986 (100 stat. 3047; known as the "Colorado Ditch Bill"), amended Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1761), authorizing the Secretary of Agriculture to issue permanent easements for qualifying water conveyance systems occupying National Forest System lands used for agricultural irrigation or livestock watering purposes.

FSM 2729.16f states "Granting easements under FLPMA for existing water conveyance system facilities, with historic operational activities, is not discretionary and, therefore, does not constitute a Federal action subject to analysis or review. Conditions of the grant, including operations and maintenance activities (FSM 2729.16k), may require environmental analysis and review (FSM 1952.2) pursuant to an appropriate level of environmental analysis consistent with the National Environmental Policy Act (NEPA)".

Terms and conditions for the ongoing operation and maintenance of qualifying facilities will be added when necessary to comply with State and Federal law, most frequently by the Federal Endangered Species Act.

II. Decision

A. Description of Decision

I have determined that all applicants and facilities listed in the attached Appendix A, all on the Medicine Bow and Routt National Forests, qualify for a Ditch Bill Easement. While granting a standard Ditch Bill easement for a qualifying facility is non-discretionary, the Forest Service does have discretion to include additional terms and conditions in the easement and to include an Operation and Maintenance plan (O&M) plan. I have decided to condition these ditch bill easements by issuing an Operation and Maintenance plan developed for, and specific to, each easement. I have determined that implementation of the O&M plans will not result in any significant change in use or management of the facilities, so any deviation from effects experienced in the past will be minimal.

B. Rationale for My Decision

These applicants have applied for easements under Public Law 99-545, commonly referred to as "The Colorado Ditch Bill." Under this act, an easement must be granted if the applicant meets specific requirements and if the water system meets all criteria of the Act. It has been determined that the applicants and facilities in the attached list meet all the requirements of the act, therefore an easement must be granted.

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 reservoirs 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 and storage systems.

III. 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 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.12 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 at the Brush Creek/Hayden Ranger District Office in Saratoga, Wyoming.

A. Category of Exclusion

My decision, to apply terms and conditions to these easements via the O&M plans, is categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook (FSH) 1909.15, 31.2. This project fits 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." These facilities were previously authorized under a special use permit, which will now be replaced by the easement. Use will generally remain the same.

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 (TEP) and Forest Service Sensitive Species or their Critical Habitat (Endangered Species Act: Section 7.)*

   A Biological Assessment (BA) for Ditch Bill Easements was prepared and approved on December 4, 2006, addressing the potential effects of conditions under which continued Operation and Maintenance (O&M) of an existing facility will be authorized would have on TEP species. The BA addressed the effects of 22,505 acre-feet (af) of water depletion from 46 facilities in the Platte River Basin on the whooping crane (Grus Americana), least interior tern (Sterna antillarum), bald eagle (*Haliaeetus leucocephalus*), piping plover (Charadrius melodus), pallid sturgeon (Scaphirhynchus albus), Western prairie fringed orchid (Platanthera praeclara), Preble's meadow jumping mouse (Zapus hudsonius preblei), Canada lynx (*Lynx Canadensis*), Ute ladies' tresses (Spiranthes diluvialis), Colorado butterfly plant (Gaura neomexicana coloradensis), and North Park phacelia (Phacelia formosula).

   Determinations by species were:

   - ✧ Whooping crane, interior least tern, bald eagle, piping plover, pallid sturgeon, and Western prairie fringed orchid ***may affect, and is likely to adversely affect (LAA)*** the species downstream and also ***may affect, and is likely to adversely affect (LAA) critical habitat*** for the whooping crane and piping plover.

   - ✧ Canada lynx, Preble's meadow jumping mouse – **"may affect"** but is **"not likely to adversely affect".**

   - ✧ Ute ladies' tresses, Colorado butterfly plant, North Park phacelia – **"No effect".**

   Based on these determinations, the Forest Received a Biological Opinion (BO–ES-61411/W./WY070F0280); ES-6-W-07-F018) on May 17, 2007 from Fish and Wildlife Service (FWS) stating that the proposed action is consistent with the Tier 1 Programmatic Biological Opinion and is not likely to jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened northern Great Plains population of the piping plover, western prairie fringed orchid, or bald eagle in the central and lower Platte River. The Federal Action is also not likely to destroy or adversely modify designated critical habitat for the whooping crane.

   The FWS also concurred on the finding of "may effect" but is "not likely to adversely affect" to Canada Lynx and Preble's meadow jumping mouse.

Sensitive Species (FSM 2670): Biological Evaluations (BE) in accordance with FSH 2670 were prepared, (BE of Plant/Animal Spp. and MIS Report for Ditch Bill Easement Applications, dated January 2007) addressing the effects of the proposed action on Forest Service sensitive plant and animal species. The report concluded that the proposed actions **"may impact some individuals, but is not likely to cause a trend towards Federal listing or result in loss of viability in the planning area".**

2. *Floodplains and Wetlands, or Municipal Watersheds* - Floodplains and wetlands effects are inherent in water diversion facilities associated with streams and reservoirs. The water conveyance and storage infrastructure occupies a relatively small percentage of floodplains and should have no effect on flood stage. Several common types of wetlands are indirectly affected by dewatering, but this impact is associated with a valid State water right and is non-discretionary. Nearly all watersheds on the Forest provide for public water supplies. None of the facilities are located in a designated municipal watershed. This use is an established baseline and consequently will not result in a change in effect to public water supply.

3. *Congressionally Designated Areas* – None of the facilities associated with this Decision are located within Congressionally Designated areas.

4. *Inventoried Roadless Areas* – Cow Creek Reservoir is located in the Mowry Peak Inventoried Roadless Area. Keystone Reservoir is located in the Campbell Lake Inventoried Roadless Area and Soldier Creek Ditch is located in the Soldier Creek Inventoried Roadless Area. The existence of these facilities and the operation and maintenance of them pre-date the roadless inventories. Guidelines to limit additional impacts on the roadless character of the surrounding area are established in the Operation and Maintenance Plan that accompanies the easements.

5. *Research Natural Areas* - None of the facilities associated with this Decision are located within Research Natural areas.

6. *Native American Religious or Cultural Sites, or Areas* - The facilities listed in Appendix A were reviewed by the Forest Archaeologist. There will be no effects to this circumstance.

7. *Archaeological Sites or Historic Properties or Areas* - The Forest Archeologist spoke with representatives from the Wyoming State Historic Preservation Office. The office said that they did not need to see consultation from the Medicine Bow/Routt National Forests concerning the Ditch Bill. Rather, they would prefer to see the Forest Service consult when there is an action that may affect any potentially National Register eligible ditch at the time of the action.

The Forest has made a determination that no significant historic properties will be affected. All Operation and Maintenance Plans include a clause requiring operations to cease until a review can be completed and appropriate action taken, if items of archaeological, paleontological or historic value are discovered.

IV. Public Involvement

Scoping for public input and comments for these listed facilities was accomplished by:

1. Listing the proposal to issue conditional permanent easements in the MBR "Schedule of Proposed Actions" on April 1, 2006.

2. A scoping letter was mailed on October 31, 2006, from the Brush Creek/Hayden Ranger District, to 26 individuals and organizations that have expressed interest or had been identified as having an interest in being informed of activities to take place on the MBR NF and requesting their comment on any extraordinary circumstances by November 30, 2006.

The Brush Creek/Hayden Ranger District received four comment letters in response to the request for public input.

V. Findings Required By Other Laws And Forest Service Policy

My decision will comply with all applicable laws and regulations. Supporting documentation for these findings is located in the project files. A summary of pertinent laws follow.

Federal Land Policy Management Act of 1976 (FLPMA) as amended by Public Law 99-545, of October 27, 1986 (Colorado Ditch Bill): The Act directed the Secretary of Agriculture to issue permanent easements to owners of certain qualifying water storage and/or transmission facilities on National Forest System Lands, which were used to convey water to private lands for agricultural irrigation and livestock watering purposes. All applications and supporting documentation for the listed facilities meet the criteria specified by the act.

National Forest Management Act: The projects are consistent with 2003 Medicine Bow National Forest Land and Resource Management Plan Revision. Management Indicator Species (MIS) identified in the Plan was considered in the Biological Evaluations for the affected areas, prepared in January 2007, and effects of the action were analyzed. The proposed activity is determined to have minimal impact or have no measurable impact on MIS.

National Environmental Policy Act (NEPA): Conditioning these easements via the O&M Plans, is categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook (FSH) 1909.15, 31.2, 15. Environmental review is documented by this Decision Memo and supporting information contained in the project files.

National Historic Preservation Act (NHPA): In addition to the discussion under items 6 and 7 of 'extraordinary circumstances', the Operation and Maintenance Plan which accompanies each easement includes a clause (#6) which requires that "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 are discovered, the Holder shall immediately cease all activities ....". Continued activity must be approved by an authorized officer.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with the Act as it is not expected to adversely impact minority or low-income populations.

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

Effects on Prime Rangeland, Forest Land and Farm Land - The decision is in compliance with Federal Regulations for prime range, forest and farm lands. There will be no effect on NFS grazing allotments. The facilities being authorized convey water to private lands for beneficial use in agricultural irrigation and livestock watering.

Energy Requirements and Conservation Potential - The action will not result in a change in energy requirements or conservation potential.

Air Quality - The project will have no long term effect on air quality. Some minor intermittent and localized effect may result from maintenance activities.

Wild and Scenic Rivers Act - There are no designated Wild or Scenic Rivers impacted by the operation of these facilities.

VI. Administrative Review Or Appeal

This decision is not subject to administrative appeal pursuant to 36 CFR 215.12(f).

VII. Implementation Date

This decision may be implemented immediately.

VIII. Contact Person

Further information about this decision can be obtained from Thomas A. Florich, Ditch Bill Project Team Leader, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, WY 82070; Phone (307) 745-2435; FAX (307) 745-2398; or electronically at tflorich@fs.fed.us

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February 26, 2008
Date

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Appendix A

Ditch Bill Easement Applicant	Conveyance Facilities
Silver Spur Land and Cattle Company	Cow Creek Reservoir
Silver Spur Land and Cattle Company	Enlarged Cress Supply Ditch
Silver Spur Land and Cattle Company	Nieswender Ditch
Silver Spur Land and Cattle Company	Soldier Creek Ditch
Silver Spur Land and Cattle Company	Keystone Reservoir aka South Twin Reservoir
XH Land and Cattle Company	Fulton Ditch
XH Land and Cattle Company	Fulton #1 Ditch