**Decision Memo**
**Agricultural Irrigation and Livestock Watering System**
**2 Easements for 2 Facilities**
**Under the Colorado Ditch Bill Act of 1986**

**Grand Mesa, Uncompahgre and Gunnison National Forests**
**Region 2, USDA Forest Service**

# I. DECISION

## A. Description of Decision

I have determined that all applicants and facilities listed in the attached Appendix A, all on the Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forests, in the Upper Colorado River Basin, qualify for a Ditch Bill Easement and 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. Purpose of 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.

The terms and conditions described in the Operation and Maintenance (O&M) plan for each facility were developed based on an interdisciplinary review, from which recommendations were made to provide for adequate resource protection.

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 their potential effect 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 and storage systems.

## 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 at the Grand Mesa, Gunnison and Uncompahgre National Forest Headquarters in Delta, Colorado.

### 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. The components of this project fit within the context of either Category 3: "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land" or, 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." Category 3 facilities are those which were found to have no previous formal authorization, but which are qualified for, and will be authorized by Ditch Bill easement.. Category 15 facilities were previously authorized under a special use permit, which will now be replaced by the easement. Use will generally remain the same in either case.

### 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 in December 2005, 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 14,130 acre-feet (af) of water depletion from 30 facilities in the Upper Colorado River Basin on four endangered fish occurring in the Colorado River drainage: Colorado pikeminnow (*Ptychocheilus lucius*), humpback

chub (*Gila cypha*), bonytail chub (*Gila elegans*), and razorback sucker (*Xyrauchen texanus*) and their critical habitats. The BA also examined potential effects of implementing Ditch Bill O&M plans on Canada lynx (*Lynx Canadensis*), bald eagle (*Haliaeetus leucocephalus*), Mexican spotted owl (*Strix occidentalis lucida),* Uncompahgre fritillary butterfly (*Boloria acrocnema*), and Unita Basin hookless cactus (*Sclerocactus glaucus*). Determinations by species are:

- **Four endangered fish in the Colorado River drainage – "may affect"** and is **"likely to adversely affect"** the **Colorado Pikeminnow, Razorback Sucker, Humpback Chub, Bonytail Chub**, and is also **"likely to adversely affect"** the designated critical habitat located downstream of the action, due to water depletions.

- **Canada lynx – "may affect"** but is **"not likely to adversely affect"** due to implementation of Operation and Maintenance Plans.

- **Bald eagle, Mexican spotted owl, Uncompahgre fritillary butterfly, and Unita hookless cactus – "No effect".**

On April 13, 2006, the GMUG and White River National Forests received a Biological Opinion (BO#ES/GJ-6-CO-99-F-033-CP071) from Fish and Wildlife Service (FWS) stating that the proposed action would jeopardize the continued existence of the four endangered fish in the Colorado River drainage and result in adverse modification of critical habitat. The FWS further determined that jeopardy can be offset by implementation of a Section 7 Agreement and the Recovery Implementation Program Recovery Action Plan (RIPRAP) developed in 1993 for the endangered fish.

On December 20, 1999, the FWS issued a final Programmatic Biological Opinion (PBO) for water projects controlled by the Bureau of Reclamation (BOR), other depletions not associated with BOR, and funding and implementation of RIPRAP in the Upper Colorado River above the confluence with the Gunnison River. The FWS determined that projects that fit under the umbrella of PBO would avoid the likelihood of jeopardy and/or adverse modification of critical habitat for depletion impacts. The Colorado River PBO states that in order for actions to fall under its umbrella and therefore, rely on the Recovery Implementation Program Recovery Action Plan to offset its depletion, the following specified criteria must be met.

- A Recovery Agreement must be offered and signed prior to conclusion of section 7 consultation.
- A fee to fund recovery actions will be submitted as described in the proposed action for new depletions greater than 100 acre-feet/year.
- Reinitiation stipulations will be included in all individual consultations under the umbrella of this programmatic.
- The FWS and project proponents will request that discretionary Federal control be retained for all consultations under the programmatic.

The FWS has determined that the 300 Ditch Bill easements that deplete 99,858 acre-feet of water do fall under the umbrella of PBO. To meet the requirements of PBO, and therefore avoid jeopardizing the continued existence of the endangered fish, the Forest Service will provide an individual permit holder a Recovery Agreement and secure their signature prior to finalizing Ditch Bill easements (see attached). The Forest will return the signed agreement to the FWS. The Forest is also required to submit an annual report to FWS of water depletions associated with Ditch Bill easements for which Recovery Agreements have been signed. Specific information required in this annual report is in the Opinion (BO#ES/GJ-6-CO-99-F-033-CP071). Because all depletions associated with the proposed action are historic, the recovery fund fee is waived.

The FWS also concurred on the finding of "may effect" but is "not likely to adversely affect" to Canada Lynx.

**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 August 2005) 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".** No additional conditioning of the easements beyond the standard O&M plans is required for protection of sensitive plant and animal species.

2. *Floodplains and Wetlands, or Municipal Watersheds* - Flood Plains 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 listed facilities are located in a Congressionally Designated Area.

4. *Inventoried Roadless Areas* – None of the listed facilities, further described in Appendix A to this decision, are located wholly or partially within Inventoried Roadless Areas as defined in the GMUG NF Forest Plan.

5. *Research Natural Areas* - There are none present in the project areas.

6. *Native American Religious or Cultural Sites, or Areas* - The facilities listed in Appendix A were reviewed by the Forest Archaeologist. There are no known American

Indian religious or cultural sites in the project areas. There will be no effects to this circumstance.

7. *Archaeological Sites or Historic Properties or Areas* - Surveys for cultural resources and appropriate consultation with the State Historic Preservation Office are completed for all facilities where potential for future impacts through continuing operation of the facilities has been determined to exist. 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.

## III. OTHER RESOURCES CONSIDERED

All facilities were surveyed using hand held GPS units. Numerous point location issues of concern such as diversion structures, measuring devices, ditch freeboard, flow impediments, erosion, noxious weeds, fish barriers and other, were logged and photographed to document resource maintenance needs to aid in developing the Operation and Maintenance Plan for each.

## IV. PUBLIC INVOLVEMENT

Scoping for public concern and comment for these listed facilities was accomplished by:

1. Listing the proposal to issue conditional permanent easements in the GMUG "Schedule of Proposed Actions" on January 1, 2005;
2. Issuing letters on April 5, 2005, from each Ranger District, to all individuals and organizations that have expressed interest or have been identified as having an interest in being informed of activities to take place on the GMUG NF and requesting their comment on any extraordinary circumstances by May 16, 2005. These April 5th letters identified all facilities on the Forest that were being considered for Ditch Bill easements and listed the extraordinary circumstances which would be of concern to the Forest Service.
3. Issuing concurrent news releases to newspapers publishing in the GMUG NF regional area, inviting comment.

The comment period was extended to June 30, 2005, at the request of the Pathfinder Steering Committee. Pathfinders is a informal local group comprised of individuals from State Government, environmental and public advocacy conservation organizations, water users and others, who represent a wide variety of stakeholder interest and concerns related to water use.

Each Ranger District received a single letter of comment, jointly signed by Trout Unlimited and High Country Citizen's Alliance. These letters were similar in content and

primarily addressed Forest Service policy with respect to administering the easements. There were no general public comments received specific to the facilities included in this decision.

## 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 PublicLaw 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 the 1983 Grand Mesa, Uncompahgre and Gunnison National Forest Land and Resource Management Plan (as amended in 1991). Management Indicator Species (MIS) identified in the GMUG NF Forest Plan (1991; 2005 MIS amendment) were considered in the Biological Evaluations for the affected area, prepared in August, 2005, 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.

**Endangered Species Act -** There are no conditions that would constitute a significant effect on Threatened, Endangered and Proposed species. See Section II.B.1. of this document.

## V. ADMINISTRATIVE REVIEW OR APPEAL

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

## VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

## VII. CONTACT PERSON

Further information about this decision can be obtained from Dennis Hovel, Ditch Bill Project Team Leader, Grand Mesa, Uncompahgre National Forests, 2250 Hwy 50, Delta, CO 81416; Phone (970) 874-6644; FAX (970) 874-6698; or electronically at dhovel@fs.fed.us

Randall Karstad

RICHARD STEM
Deputy Regional Forester
Rocky Mountain Region, R-2
USDA Forest Service

Date September 14, 2007

## APPENDIX A: List of facilities addressed by this Decision Memo*

| Easement Issued To: | Grand Valley RD | |
|---|---|---|
| | Facility | ID |
| Eleanor B. Nichols & Charles Nichols, Jr. | Lost Lake Reservoir & Ditch | GV075 |
| Frank S. Mooney, Trustee of the Abigail S. Mooney Trust | RMG Ditch | GV097 |

1/ Facilities with no previous authorization [FSH1909.15, 31.2(3)]