
DECISION MEMO

Agricultural and Livestock Water Conveyance System Easements
For 12 Facilities
Under the Act of October 27, 1986

White River National Forest
Region 2, USDA Forest Service

I. DECISION

A. Description of Decision

I have determined that all the facilities and their associated applicants listed in the attached Appendix A on the White River National Forest, 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 (O&M) 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 the use and management or impacts of the facilities, so any deviation from effects experienced in the past will be minimal.

B. Purpose of Decision

The Act of October 27, 1986, amended Title V of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (43 U.S.C. 1761; 90 Stat. 2776) to authorize the Secretary of Agriculture to issue permanent easements without charge for water conveyance systems used for agricultural irrigation or livestock watering. The Act, commonly referred to as the Colorado Ditch Bill, requires that an easement must be granted for each individual facility if an applicant meets specific requirements and if the water system meets all criteria of the Act.

These applicants applied for easements under the Colorado Ditch Bill. 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 issued.

Granting such easements is non-discretionary and, therefore, not a Federal action subject to analysis or review (FSM 2729.16f). However, analysis was conducted 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 making a decision for each facility is to document any environmental concerns associated with the operation and maintenance of the facility, their potential effect on TES Species, and to document the need for any additional conditioning of the easement that may be necessary to protect the environment from degradation due to the continued operation of the water conveyance 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.

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 a 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.

In addition, after reviewing the project with White River National Forest specialists, I have determined that there are no extraordinary circumstances that might cause the action to have significant effects. This conclusion is based on information presented in this document, review of the proposal, the entirety of the Planning Record as well as personal knowledge of similar past projects and professional judgment.

B. Resource Conditions Related to Extraordinary Circumstances

There are no conditions that would constitute a significant effect on an extraordinary circumstance as defined by Forest Service Handbook (FSH) 1909.15, Chapter 30, related to the proposed authorizations. This conclusion is based on evaluation of the following items.

For the purpose of determining the effects of the action on extraordinary circumstances, the "environmental baseline condition" includes the water development facility and the conditions that exist as a result of the effects of its current use, operation, and maintenance. The O&M Plan that is part of the easement does not represent a significant change in the operation or maintenance of the facility.

The mere presence of one or more of the following resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

Terms and conditions have been included in the Easement and O&M Plan in order to minimize the potential for adverse impacts to these resources. Each easement holder agrees to operate and maintaining their facility and use the granted land in accordance with the related O&M Plan, and are responsible for controlling the amount of their decreed water transmitted through ditches or other water facilities. The easement holder is liable for the damage to National Forest System lands caused by the holder's negligence, intentional acts, or failure to comply with terms and conditions of the easement or any applicable law. The Colorado Ditch Bill provides for the termination of the easement under three circumstances: change in the end-use of the water to a nonqualified use, abandonment, or termination. An authorized officer may initiate action to terminate an easement for breach of terms and conditions

1. *Federally Listed Threatened, Endangered, Proposed (TEP) and Forest Service Sensitive Species or Designated Critical Habitat*

The Endangered Species Act (ESA) requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat. These facilities have been in existence for many years and are generally in close proximity to private property. No additional habitat change will occur under this authorization, and populations existing in the area would not be subject to additional effects in the foreseeable future.

A Biological Assessment for Threatened, Endangered and Candidate fish, terrestrial and plant species was prepared and submitted to the US Fish and Wildlife Service (USFWS) for concurrence. A Biological Opinion (BO # ES/GJ-6-CO-99-F-033-CP071) by the USFWS was rendered on April 13, 2006. The Biological Opinion stated the proposed action may adversely affect the endangered Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), bonytail (*Gila elegans*) and their designated critical habitat due to annual water depletions related to the proposed action. However, the USFWS determined that a prudent alternative for individual projects to avoid jeopardizing the four endangered fish species or their habitat in the Upper Colorado River Basin would be for each facility owner to enter into a Recovery Agreement as part of the Recovery Implementation Program Recovery Action Plan developed for the endangered fish species'. A clause has been added to the easements requiring the easement holders to enter into a Recovery Agreement with the USFWS in order to comply with the USFWS opinion.

The USFWS concurred with the Forest Service determination that the proposed action may affect, but is not likely to adversely affect Canada Lynx (*Lynx canadensis*). No additional Threatened, Endangered and Candidate species would be affected by this decision.

Sensitive Species (FSM 2670): Forest resource specialists conducted wildlife, aquatic and plant reviews for each facility and a Biological Evaluation (BE) was prepared. The BE analysis determined that the action "may adversely impact individuals, but is not likely to result in a loss of viability in the Planning Area, nor cause a trend to federal listing or a loss of species viability rangewide."

The issuance of these easements would not contribute to or involve any extraordinary circumstances that would affect the viability of any White River NF sensitive species. This action would not result

in negative consequences to sensitive species populations from the standpoint of affecting viability at the Forest level. The stipulations contained within the easements and the standard O&M Plans will result in protection of sensitive plant and animal species.

2. Floodplains and Wetlands, or Municipal Watersheds

Floodplains and wetlands are inherent to 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. Inspection of the facilities did not document any significant wetland impacts from use of the facilities. Based on the following facts, this decision will not result in significant wetlands-related impacts:

- Each of these facilities has been in use for 30 – 100+ years on the Forest
- The historic use of the facilities will continue
- The lack of detrimental wetland impacts associated with their use has been documented
- Stipulations have been included for future resource conservation

The irrigation facilities will be maintained to function effectively and to convey irrigation water to the easement holder's property. No floodplains, wetlands or municipal watersheds are affected by this action. Future non-routine operation and maintenance activities shall be reviewed by the Forest Service and additional terms and conditions may be placed on these activities to protect floodplains, wetlands and municipal watersheds.

a. Congressionally Designated Areas

The following facilities, further described in Appendix A to this decision, is located wholly or partially in congressionally designated Wilderness; Columbine Ditch (D22) and Nickelson #3 Ditch (A23). These structures have been in place for many years and pre-date any wilderness designation. The conditioning of the O&M Plans for these easements limits routine maintenance within the Wilderness Areas to foot and horse traffic and hand tools and is entirely commensurate with the wilderness experience. Prior approval by the authorized officer is required if use of any motorized equipment becomes necessary on these facilities. None of the subject facilities are within a Wild and Scenic River corridor or other special interest area.

Inventoried Roadless Areas

The following facilities, further described in Appendix A to this decision, are located wholly or partially in Inventoried Roadless Areas as defined in the White River Forest Plan; Frenchman Creek Ditch Numbers 1, 2, 3 and First Enlargement (S13, S16, S17, S18), Joufflas Ditch Headgate No. 2 (S14a), Spring Creek Ditch (S15) and Switzer Ditch (H25). These facilities pre-date roadless inventories. Their continued operation and maintenance will have no additional impacts on the roadless character of the surrounding area. No new roads will be established and no new construction of roads is proposed. The decision to authorize the easement will not change or affect inventoried roadless areas.

b. Research Natural Areas

There are no designated or established Research Natural Areas near the facilities included in this decision. This decision will not affect designated or established Research Natural Areas.

c. American Indians Religious or Cultural Sites, Archeological Sites or Historic Properties

The Forest archeological staff made a determination that there are no known religious, cultural, archeological or historical sites that will be negatively affected by the operation and maintenance of the facilities included in this decision. The Forest's determinations were forwarded to the Colorado State Historical Preservation Office (SHPO) prior to making this decision. A stipulation included within the easement requires the holder to notify the authorized officer of any and all antiquities or other objects of historic or scientific interest that may be found. Future activities that may be proposed by the holder and are outside the scope of routine operations and maintenance authorized by this decision are subject to further archeological review.

Additional Resources Considered

Additional resources that occasionally may be considered as relating to extraordinary circumstances were also considered for this decision.

a. Invasive Species

Invasive species are considered a primary threat to National Forest System lands. The Easement and O&M Plan contain clauses intended to help reduce, minimize, or eliminate the potential for introduction, establishment, spread, and impact of invasive species. These clauses govern use of weed-free seed, hay and mulch, treatment and control of invasive species and use of pesticides.

b. Soil Erosion and Gullyng

The Watershed Conservation Practices Handbook, FSH 2509.25, Chapter 10, Management Measure 8 states, "Manage water-use facilities to prevent gully erosion of slopes and to prevent sediment and bank damage to streams."

Each easement holder is responsible for prevention and control of soil erosion and gullyng. All facilities were inspected and where appropriate, a stipulation has been incorporated into the O&M Plan that requires each holder to regulate channel flows to maintain adequate freeboard above the water line in the facility. Maintenance of freeboard is intended to minimize the possibility of ditch failure and the associate gullyng that can occur. It will also help to protect aquatic resources in the affected stream channel by reducing sediment loads caused by overtopping or ditch failure. In some cases the historic operations of the facility has contributed to the establishment of desirable wetland complexes that should be maintained and the potential for sediment loading, erosion or ditch failure was determined to be minimal so the above mentioned stipulation was not incorporated into the O&M Plan.

Language within stipulations requires holders to be responsible for inspection of diversion and headgate structures to ensure proper function and to inspect the facility periodically through out the operating season and after major storm or flow events and make necessary repairs.

These stipulations are important for meeting the requirements to minimize damage under FLPMA Sec. (505), as well as meeting the intent of Management Measure 8 of FSH 2509.25.

b. Access

Motorized equipment would only be allowed across existing access routes for operation and maintenance of each facility. Some facilities may require access along routes that are not open to the general public and are specified in the O&M plan. Any motorized vehicle use of routes across National Forest that are not open to the general public require written authorization by the Authorized Officer.

Scoping

Scoping to solicit issues and concerns related to the proposed action was accomplished through:

- Processing of these White River National Forest Ditch Bill easements was initially published in the 4th quarter of the 2006 (July 1, 2006) Schedule of Proposed Actions (SOPA) for the White River National Forest. It has remained on every quarterly SOPA update since that time.
- Mailings addressing the proposed action were sent to potentially interested or affected organizations and individuals on August 16, 2006 and August 17, 2007. Included in this mailing were; four members of Congress, County Commissioners, Colorado Division of Wildlife, Colorado River Water Conservation Board, Colorado Division of Water Resources, North West Colorado Council of Governments, Trout Unlimited, Wilderness Workshop, Eagle River Watershed Council, Roaring Fork Conservancy, Colorado Environmental Coalition, Farm Bureau, Wilderness Society, all Ditch Bill applicants or their designated attorneys, among others.
- Posting the scoping letter, maps and associated information on the public website at: http://www.fs.fed.us/r2/whiteriver/projects/ditch_bill/index.shtml
- This proposal was scoped and reviewed internally and included site visits by resource specialists.

Five responses to scoping were received. The comments primarily addressed eligibility requirements, use of categorical exclusions for issuing the authorizations, conditioning the O&M Plans and administering the easements. No site-specific comments were received for these facilities. No issues or concerns identified extraordinary circumstances or required additional stipulations. A detailed response to the issues raised is part of the project record.

Findings Required by Other Laws

This 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): All applications and supporting documentation for the listed facilities were determined to meet the qualifying criteria established by Public Law 99-545 and further described in FSM 2729.16a. In addition, other Federal laws were evaluated to determine whether additional terms and conditions for the ongoing operation and maintenance of the qualifying facilities were needed. Additional terms and conditions considered appropriate are included in the Operation and Maintenance plan attached to each easement.

National Forest Management Act: This action is consistent with management direction in the 2002 - White River National Forest Land and Resource Management Plan as required by the National Forest Management Act (FSM 1922.41 & FSH 1909.12). It also conforms to current Forest Service policy and regulations.

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. This Decision Memo documents the environmental review. Supporting information is contained in the project files.

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

Administrative Review or Appeal Opportunities

This decision is not subject to public comment and appeal pursuant to Forest Service Regulations 36 CFR Part 215.4(a) and Part 215.12(f). Implementation of this project may begin immediately.

Contact

For further information about this decision, please contact Jon Freeman, Lands Program Manager, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602; Phone (970) 945-3219.

Responsible Official Signature

for 
ANTOINE L. DIXON
Deputy Regional Forester
Rocky Mountain Region, R2
Forest Service, Department of Agriculture

March 2, 2009
Date

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EXHIBIT A:
 White River National Forest
 Ditch Bill Cases for
 November 2008 Decision Memo

For more information contact:
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	Existing map code	FACILITY	LEGAL DESCRIPTION	STREAM	COUNTY
1	H27	Castle Ditch Feeder from Trail Creek	T2S, R82W, Sec 32	Trail Creek	Eagle
2	H29	Castle Reservoir # 13	T2S, R82W, Sec 32	Castle Ceek	Eagle
3	D22	Columbine Ditch	T4S, R79W, Sec 1, 2, 3	Bloedsoe Creek	Summit
4	S13, S16, S17, S18	Frenchman Creek Ditch No's. 1, 2, 3 & First Enlargement	T8S, R85W, Sec 3	Frenchman Cr	Eagle
5	E30, E31, E32	HMS Ditch (HMS Ditch relocated, HMS Ditch relocated 1st enlargement and extension)	T3S, R87W, Sec 16	Sweetwater Cr	Garfield
6	S14a	Joufflas Ditch Headgate # 2	T7S, R85W, Sec 29	E. Downey Cr	Eagle
7	A23	Nickelson #3 Ditch	T9S, R86W, Sec 31	Nickelson Cr	Pitkin
8	E25	Pipeline Ditch	T1S, R86W, Sec 32, 33; T2S, R86W, Sec 2, 3, 4	Derby Creek	Garfield
9	S15	Spring Creek Ditch	T8S, R85W, Sec 3	Frenchman Cr	Eagle
10	H24 & H25	Switzer Ditch	T3S, R82W, Sec 3	Box Canyon Cr	Eagle
11	E26	Tippett's D Enlargement	T1S, R86W, Sec 32, 33	N Derby Cr	Garfield
12	H28	Trail & Castle Cr. Consolidated & Enlarged Ditch System No. 154	T2S, R82W, Sec 32	Castle Creek	Eagle