
DECISION MEMO

Agricultural and Livestock Water Conveyance System Easements
for the Operation and Maintenance of the 2 Facilities
Under the Act of October 27, 1986

USDA Forest Service
Rocky Mountain Region
White River National Forest
Dillon Ranger District
Summit County, Colorado

Background

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 if an applicant meets specific requirements and if the water system meets all criteria of the Act.

Decision

The White River National Forest evaluated 2 easement applications located in Summit County, Colorado during 2005 & 2006. The table below lists each facility, the owner, legal description and the stream from which each facility diverts water.

FACILITY	OWNER (HOLDER)	LEGAL DESCRIPTION	STREAM
Vie/Emmet Ditch (D02)	Beardsley, Pam & George	T3S, R79W, S-10	N. Fork Brush Cr
Whatley Ditch # 5 (D11)	Bolthouse LLC	T5S, R78,W S-24	N. Barton Cr

These applicants have applied for easements under the Colorado Ditch Bill. It has been determined that the applicants and facilities meet all the requirements of the Colorado Ditch Bill and 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 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 facilities, 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.

It is my decision to authorize the operation, maintenance and use of the 2 facilities with a FLPMA easement under the authority granted to the Secretary of Agriculture to issue permanent easements for a water conveyance system used for agricultural irrigation or livestock watering purposes. Standard terms and conditions are designed to protect the environment and comply with applicable State and Federal laws and are included within the easement. I have decided to incorporate additional terms and conditions through an Operations and Maintenance Plan (O&M Plan) attached to the easement. I have determined that incorporation of an O&M Plan will not significantly change the use, operations or management of the facilities.

An authorization will be issued to the owners to maintain and operate their respective facility. This action includes access to improvements such as headgates, flumes, pipes and other facilities needed to operate and maintain the facility.

The total acreage that each facility encompasses and the length and width of each right-of-way as measured from centerline, including cuts and fills, is listed below. The volume of the water right(s), listed as cubic feet per second (cfs), that was associated with each facility as of 1976 is also listed below.

Facility & Case No.	1976 Volume of water right	Acreage	Length (feet)	Width of ROW (feet)
Vie/Emmet Ditch (D02)	9.57 cfs	0.67	978	30
Whatley Ditch #5	1.0 cfs	0.23	493	20

After a thorough review of our Environmental Policy and Procedures Handbook (FSH 1909.15) I have determined that this action does not require documentation in an Environmental Assessment or an Environmental Impact Statement pursuant to FSH 1909.15, Chapter 30, Section 31. Chapter 31.2 outlines the Categorical Exclusion (CE) categories that require a case file and Decision Memo. This decision falls under CE 31.2, Category #3:

- “Approval, modification, or continuation of minor special uses of National Forest System lands that require less than 5 contiguous acres of land.”

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.

Resource Conditions Related to Extraordinary Circumstances

a. Federally Listed Threatened or Endangered 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. The Vie/Emmet Ditch and Whatley Ditch #5 has been in existence for many years and is 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 holder 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.

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 on 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.

b. Floodplains, Wetlands, or Municipal Watersheds –

Floodplains: Executive Order 11988 requires the agency to determine whether the improvement authorized in this decision will occur in floodplains, and if so, to include appropriate restrictions. The irrigation facilities will be maintained to function effectively and to convey irrigation water to the Beardsley and Bolthouse LLC properties. There are no plans to modify the ditch locations.

Wetlands: Executive Order 11990 requires the agency to avoid adverse impacts associated with destruction or modification of wetlands. 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 documented lack of detrimental wetland impacts associated with their use

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- Stipulations have been included for future resource conservation

Municipal Watersheds: This decision will not affect municipal watersheds.

c. Congressionally Designated Areas –

These facilities are not in Wilderness or within a Wild and Scenic River corridor or other special interest area. No congressionally designated areas will be affected by this decision.

d. Inventoried Roadless Areas-

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.

e. Research Natural Areas –

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

f. 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. 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.

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 gully. 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 a freeboard is intended to minimize the possibility of ditch failure and the associated gully 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. 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.

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. Any motorized vehicle use of routes across National Forest that are not open to the general public will require written authorization by the Authorized Officer.

Scoping

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

- Processing of the 2005 White River National Forest Ditch Bill easements was published in the 3rd and 4th quarters of the 2005 Schedule of Proposed Actions for the White River National Forest.
- A mailing addressing the proposed action was sent to potentially interested or affected organizations and individuals on June 20, 2005. Included in this mailing were; four members of Congress, County Commissioners, Colorado Division of Wildlife, Colorado 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, among others.
- This proposal was scoped and reviewed internally and included site visits by resource specialists.

No issues or concerns identified extraordinary circumstances or required additional stipulations.

Colorado Trout Unlimited provided a letter containing general comments. Their comments were substantive and were generic to the process. No site-specific comments were received for these facilities. The comments were grouped into four distinct categories:

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1. Each application must be reviewed prior to an easement being issued, and subsequent to easement execution, each facility must be monitored to ensure compliance with all eligibility criteria outlined in the Ditch Bill Act.
 2. Easements must contain terms and conditions to protect the environment, scenic and esthetic values and aquatic and terrestrial resources, including sensitive species and special areas such as designated Wilderness.
 3. The Forest Service must revise terms and conditions of the operations and maintenance of each facility whenever changed circumstances render existing terms and conditions inadequate to protect the environment and to comply with applicable State and Federal law.
 4. The Forest Service must determine whether there are extraordinary circumstances related to the Ditch Bill applications before a Categorical Exclusion (CE), pursuant to the National Environmental Policy Act (NEPA) can be used.

Vie/Emmet Ditch and Whatley Ditch #5 meet all of the nine eligibility criteria for an easement contained in the Ditch Bill statute (P.L. 99-545). Periodic review of the Operations and Maintenance Plan (O&M Plan) will provide the opportunity to ensure continued compliance with the eligibility criteria.

These facilities were reviewed during the interdisciplinary analysis process and the terms and conditions attached within the easement and the associated O&M Plan are designed to minimize damage to scenic and esthetic values, aquatic and terrestrial resources and to protect the environment.

The District Ranger may revisit the O&M Plan annually to tailor the operations and maintenance of these facilities to protect the environment and to comply with applicable State and Federal law. These O&M plans can be updated as circumstances change or needs warrant.

Vie/Emmet Ditch and Whatley Ditch #5 were inspected and operations and maintenance procedures were reviewed during the interdisciplinary analysis process. The conclusion was that they are not causing impacts that would be considered as extraordinary circumstances. Therefore, a determination was made that the decision to issue and condition a Ditch Bill easement for each facility could be made as a "Categorical Exclusion"; i.e., a decision made pursuant to the National Environmental Policy Act of 1970 (NEPA), but excluded from documentation in an Environmental Assessment or Environmental Impact Statement.

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.

Federal Land Policy Management Act of 1976 (FLPMA) as amended by Public Law 99-545, of October 27, 1986 (Colorado Ditch Bill): The applications for the Vie/Emmet Ditch and Whatley Ditch #5 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.

Upon qualifying for and electing to accept a Ditch Bill Easement, the owners of the Vie/Emmet Ditch and Whatley Ditch #5 will be required to relinquish any and all claims they may have to prior statutory rights (FSM 2729.16a, 9.).

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.

National Historic Preservation Act (NHPA): In addition to the discussion under section (f) of Resource Conditions Related to Extraordinary Circumstances, each easement includes clause (X-17) under section 13. Special Provisions which requires that "The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest..." Before proceeding with any activity, the holder must acquire authorization from the 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 the section titled: Resource Conditions Related to Extraordinary Circumstances of this document.

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 Mike Kenealy, Realty Specialist, White River National Forest, at (970) 945-3207. Records relating to these projects, including the environmental review, are available at the White River National Forest, 900 Grand Avenue, P.O. Box 948, Glenwood Springs, CO 81601.

Responsible Official Signature

For 
RICHARD C. STEM
Deputy Regional Forester
Rocky Mountain Region, R2
Forest Service, Department of Agriculture

November 6, 2006
Date

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