# Decision Memo

## Agricultural Irrigation and Livestock Watering System Easements Authorized Under the Colorado Ditch Bill Group 6

**San Juan National Forest**
**Region 2, USDA Forest Service**

## I. DECISION

### A. Description of the Decision

I have determined that the applicants and facilities listed in the Appendix A (attached), which are located on National Forest System lands of the San Juan National Forest, meet the minimum requirements to receive agricultural irrigation and livestock watering system easements authorized under the Colorado Ditch Bill. The terms and conditions under which these easements are being authorized are described in the Operation and Maintenance Plan (O&M Plan) specific to each facility. I have determined that implementation of the O&M plans will not result in any significant change in use or management of these facilities. Therefore, any deviation from historic environmental effects will be minimal.

### B. Purpose and Need for Action

The "Colorado Ditch Bill" (Public Law 99-545 (HR 2921)) amended Section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). The Amendment directed the Secretary of Agriculture to issue conditional permanent easements for water conveyance systems to applicants who meet the qualifying criteria. Under the Act, the U.S. Forest Service is statutorily required to issue to qualified applicants an "Agriculture Irrigation and Livestock Watering System Easement" (Form FS-2700-9a). The Form contains standard terms and conditions to assure that the operation of the facility is conducted in a manner that complies with the provisions of the Act. Qualifying applicants are to be issued permanent conditional easements without charge, for water transportation or storage systems used for agricultural irrigation or livestock watering that meet the following requirements:

1. The applicant submits a written application on or before December 31, 1996.
2. The water system must have been constructed and used prior to October 21, 1976. (Extensions or enlargements constructed after October 21, 1976, do not qualify for an easement, and must be covered by other authorities.)
3. The National Forest System lands involved must be in a state 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. (Incidental domestic use is acceptable.)
5. The uses served by the water system must not be located solely on federal lands.
6. The originally constructed water system facilities must have been in substantially continuous operation without abandonment.
7. The applicant must have a valid existing right established under state law to use the water conveyed by the water system.

8. The applicant must provide a recordable survey and other information concerning the location and characteristics of the system.

The Forest Service's responsibility to condition the easement with specific terms and conditions, as required under Section 505 of the Federal Land Policy Management Act and as reflected in the operation and maintenance plan, triggers a discretionary federal action that is subject to the requirements of the National Environmental Policy Act and other related laws and regulations. This federal action focuses on the determination of what terms and conditions to incorporate into the easement, and the environmental effects of implementing the terms and conditions when compared to the baseline condition (current conditions and management). Future facility operations are to be consistent with applicable federal and state laws and regulations, including, for example, the Endangered Species Act, the Federal Land Management Policy Act, and National Forest Management Act.

The point of diversion for the ditches, pipelines, reservoirs or other qualified water facilities may occur on National Forest System lands or private lands, but must cross NFS lands in one or more places. The provisions of the Act allow transfers of the easement to other agricultural irrigation or livestock watering users without the imposition of fees.

## 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 San Juan Public Lands Center, located in Durango, Colorado.

### A. Category of Exclusion

This decision is categorically excluded from documentation in an Environmental Assessment or Environmental Impact Statement pursuant to Forest Service Handbook 1909.15, 31.2, Category 3: "Approval, modification, or continuation of minor special uses of the National Forest System lands that require less than five contiguous acres of land", **or** Forest Service Handbook 1909.15, 31.12, Category 10: "Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

Each easement holder agrees to operate and maintain 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 the terms and conditions of the easement or any applicable law. The Colorado Ditch Bill provides for 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.

**B. Relationship 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 circumstance, 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.

**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 (TES).**

A Biological Assessment was prepared in September, 2005, addressing the effects implementing the operation and maintenance of the facilities to federally listed Threatened or Endangered species. It was concluded that the project would have "no effect" on the following T&E species: Uncompaghgre fritillary butterfly and Mexican spotted owl. It was also concluded that operation and maintenance may affect, but is not likely to adversely affect, the following T&E species: Canada Lynx, bald eagle, and Southwest Willow Flycatcher. A determination of "may affect, likely to adversely affect," was made for the Colorado pikeminnow and razorback sucker. The U.S. Fish and Wildlife Service reviewed and concurred with these findings in a Biological Opinion dated March 28, 2006 (Opinion ES/GJ-6-CO-06-F-007 TAILS 65413-2006-F-0092).

A Biological Evaluation (on file at the San Juan Public Lands Center) was also conducted to evaluate the effects of facility operation and maintenance to Region 2 sensitive species. It was concluded that continued operation and maintenance would not result in a loss of viability over the planning area, a trend toward federal listing, or in a loss of species viability range-wide for any of the designated sensitive species.

**b. American Indians and Alaska Native religious or cultural sites.**

Archaeological Resources are protected by the terms of the Operation and Maintenance Plan. Holder agrees 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 (grave goods), are discovered, the Holder shall immediately cease all activities which may disturb such items and notify the Forest Service. The Holder will notify the Forest Service and shall not resume activities until written approval is given by the authorized officer. Failure to comply with this stipulation may result in civil or criminal penalties under the Archaeological Resources Protection Act of 1979.

**c. Floodplains, wetlands, or municipal watersheds.**

Floodplains and wetlands effects 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. Several common types of wetlands can be directly and indirectly affected by dewatering. However, 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 flood plains, wetlands and municipal watersheds.

**d. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.**

The issuance of an Agriculture Irrigation and Livestock Watering System Easement for the facilities would not affect congressionally designated areas, wilderness, wilderness study areas, or national recreation areas because none of these facilities are located in these areas.

**e. Inventoried roadless areas.**

The issuance of an Agriculture Irrigation and Livestock Watering System Easement for the facilities would not affect inventoried roadless areas. None of the facilities are located in roadless areas.

**f. Research natural areas.**

The issuance of an Agriculture Irrigation and Livestock Watering System Easement for these facilities would not affect research natural areas. None of the facilities are located in a research natural area.

## *III. SCOPING AND PUBLIC INVOLVEMENT*

The scoping process was used to identify issues, concerns and opportunities and to gather information about potential environmental and social effects associated with implementing the proposal. The Forest Service and other resource specialists provided input to the proposal. Notification and additional scoping for this proposed action consisted of listing the action in the Quarterly Report of Proposed Actions in the 2nd quarter of 2008.

## IV. 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 the most 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 the 1983 San Juan National Forest Land and Resource Management Plan (as amended).

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

## 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

**Contact Person:** For further information about this decision, contact Dave Gerhardt, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, (970) 385-1266.

**Approved by:**

Randall Karstedt

For ANTOINE L. DIXON
Deputy Regional Forester
Rocky Mountain Region, R-2
USDA Forest Service

March 3, 2009
Date

**USDA Nondiscrimination Statement**

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Appendix A

**Facilities Authorized Under Group 6 Decision Memo**
**San Juan National Forest**

1. The Park Ditch occupies six areas of National Forest System lands, bisected by private lands. Locations of the five segments are as follows: SW¼ SW¼ SE¼ Section 22; N½ SE¼ NE¼ Seciton 28; NW¼ NW¼ SE¼ Section 28; W½ Section 33; SW¼ SW¼ SW¼ Section 33, Township 36 North, Range 1 West NMPM; and W½ NW¼ NE¼ of Section 9, Township 35 North, Range 1 West, NMPM. The diverted water originates on National Forest System lands from the San Juan River at SW¼ SW¼ SE¼ Section 22. The Ditch transports up to 60 cfs of water to an end point located on private lands and is used for irrigation purposes. The Forest Service project area is managed primarily for timber, recreation, range, and wildlife habitat. The special use affects 7.38 acres of National Forest. Category of Exclusion: FSH 1909.15, 31.2, Category 10.

2. The Dowell Ditch is located at the NE¼, Section 7, and the NW¼ NW¼ Section 8, Township 35 North, Range 1 East., NMPM. The water originates on National Forest System lands from Mill Creek at NW¼ NW¼ Section 8, NMPM. The ditch transports up to 8.02 cfs of water to an end point located on private lands and is used for irrigation purposes. The Forest Service project area is managed primarily for timber, recreation, range and wildlife habitat. The minor special use affects 0.8 acres of National Forest System lands. Category of Exclusion: FSH 1909.15, 31.2, Category 3.

3. The Dutton Ditch is located at the SE¼, SW¼, Section 35, Township 37 North, Range 2 West, NMPM, and at E½ Section 3; Section 10; Section 16; N½ Section 21; SE¼ Section 20, Township 36 North, Range 2 West, NMPM. The water originates on National Forest System lands from Fourmile Creek at SE¼, SW¼, Section 35, Township 37 North, Range 2 West, NMPM. The ditch transports approximately 15 cfs of water to an end point located on private lands and is used for irrigation purposes. Of the 15 cfs, 2.0 cfs of water is transported by the user authorized under this decision. The Forest Service project area is managed primarily for timber, recreation, range and wildlife habitat. The minor special use affects 3.45 acres of National Forest System lands. Category of Exclusion: FSH 1909.15, 31.2, Category 3.

4. The Anesi No. 1 Ditch is located at the NW¼, NW¼, Section 21, Township 37 North, Range 8 West, NMPM. The water originates on National Forest System lands from Gaines Draw, a tributary of the Animas River. The ditch transports up to 2.0 cfs of water to an end point located on private lands and is used for irrigation purposes. The Forest Service project area is managed primarily for timber, recreation, range and wildlife habitat. The minor special use affects 0.7 acres of National Forest System lands. Category of Exclusion: FSH 1909.15, 31.2, Category 3.

5. The Deer Creek Ditch is located at the SW¼, NE¼, Section 7, Township 36 North, Range 1 East, NMPM. The water originates on National Forest System lands from Deer Creek, a tributary to the East Fork San Juan River, located at the SW¼, NE¼, Section 7,

Township 36 North, Range 1 East, NMPM. The ditch transports up to 1.0 cfs of water to an end point located on private lands and is used for irrigation purposes. The Forest Service project area is managed primarily for timber, recreation, range and wildlife habitat. The minor special use affects 0.1 acres of National Forest System lands. Category of Exclusion: FSH 1909.15, 31.2, Category 3.