

Authorization ID: PAG321  
Contact ID: WHITE EVANS,B  
Use Code: 916

FS-2700-9a (03/06)  
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE**  
**Forest Service**  
**AGRICULTURAL IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT**  
**AUTHORITY:**  
**FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976**

THIS EASEMENT issued this 26<sup>th</sup> day of February, 2008 by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called the grantor, to BILLIE WHITE EVANS a Person of the State of Colorado hereinafter called the holder(s).

The Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P. L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the San Juan National Forest, in the County of Archuleta, State of Colorado. The description of the authorized facilities is as follows:

Project Name: Girardin Ditch.

Location (legal description): NW4 SE4 Sec. 36, T. 36 N., R. 1 W., NEW MEXICO PRINCIPAL MERIDIAN.

Description of Improvements: Metal culvert headgate screw top operated lid entry located on the North bank of Coal Creek, a tributary of the San Juan River, from which creek said ditch draws its supply of water, at a point whence the North quarter corner of Section 36, Township 36 North, Range 1 West, N.M.P.M. bears North 11°13' West 3368.4 feet.

Length of Easement: Approximately 1,100 feet in length.

Width of Easement: Approximately 10 feet in width, 5 feet each side of centerline.

Area of National Forest Lands Occupied: Approximately 0.25 acre.

Upon acceptance of this easement the holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

The United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities of lands as shown on the map contained in Exhibit A, attached hereto and incorporated herein, as provided by the holder and hereby accepted by the authorized officer.

**This easement is issued subject to the following terms, provisions, and conditions applicable to the holder, its permittees, contractors, assignees, and successors in interest.**

1. Authorized Use. This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.
2. Extensions or Enlargements. This easement does not authorize extensions or enlargements of the water conveyance system.
3. Fees. This easement is issued free of charge.

4. Transferability. This easement is fully transferable provided the water conveyance system facilities are used for agricultural irrigation or livestock watering. The holder shall notify the grantor within sixty (60) days of any address change or change in ownership.

5. Tenure. This easement shall continue for as long as the above described lands and water conveyance system facilities are used, operated, and maintained in accordance with the terms and conditions herein described.

6. Operation and Maintenance.

a. The holder agrees to operate and maintain the facilities and use the authorized easement in accordance with applicable Federal, State, and local laws, regulations, and standards.

b. The holder shall notify, consult with, and obtain concurrence of the grantor for operation and maintenance of the authorized facilities.

c. The holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.

d. The holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the grantor.

e. Pursuant to the requirements of 36 CFR 251.56(b)(1)(v), the terms and conditions for operation and maintenance set forth in this section, and any operations and maintenance plan incorporated in this easement pursuant to paragraph (f) of this section, may be revised or modified by the authorized officer upon determination that:

1. Modification or revision of such terms and conditions is necessary to comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*) or applicable State or Federal law.

2. Terms and conditions contained herein are no longer needed to comply with the requirements of applicable State or Federal law.

f. The holder agrees to operate and maintain the facilities and use the authorized easements in accordance with the attached operation and maintenance plan.

7. Emergency Repairs.

a. Except for emergency repairs required to protect the environment, property of the United States, or public health and safety, the holder may not use materials on National Forest System lands outside the easement prior to obtaining written authorization and paying for the materials to be used. The holder's use of material within the easement is limited to maintenance of the water conveyance system facility.

b. If the water conveyance system facilities authorized by this easement are allowed to deteriorate to the point of threatening persons or property, and the holder, after notification by the grantor, refuses to perform the repairs and maintenance required to remove the threat to persons or property, the grantor shall have the right to undertake such repair and maintenance and to assess the holder for the costs of such repair and maintenance, regardless of whether the grantor had required the holder to furnish a bond or other security.

8. Indemnification.

a. The holder assumes all risk of loss to the authorized improvements.

b. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

9. Liability. The holder shall be liable for all injury, loss, or damage, including fire suppression, or other costs in connection with rehabilitation or restoration of natural resources associated with the use and occupancy authorized by this easement. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs in connection therewith.

10. Site Restoration. The holder shall, upon termination or revocation of this easement, stabilize the site as required by the grantor. If the holder does not stabilize the site, the holder agrees to pay the costs of such stabilization if undertaken by the grantor.

**The foregoing notwithstanding, this easement is granted subject to the following reservations by the grantor, for itself, its permittees, contractors, and assigns.**

11. Nonexclusive Use. The grantor reserves the right to use or permit others to use the easement area, provided such use does not unreasonably interfere with the rights and privileges hereby authorized.

12. Revocation and Termination. The grantor may take action to revoke this easement pursuant to 7 CFR 1.130 through 1.151 for noncompliance with applicable statutes or regulations or the terms and conditions of this easement. This easement also may be revoked with the consent of the holder, or if the holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement also terminates according to its terms if the holder uses the water conveyance system for any purpose other than agricultural irrigation or livestock watering.

13. Water Rights. This authorization does not convey any legal interest in water rights as defined by applicable State law.

ACCEPTANCE On this 2<sup>nd</sup> day of DECEMBER 2007 I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.

Billie White Evans  
Billie White Evans

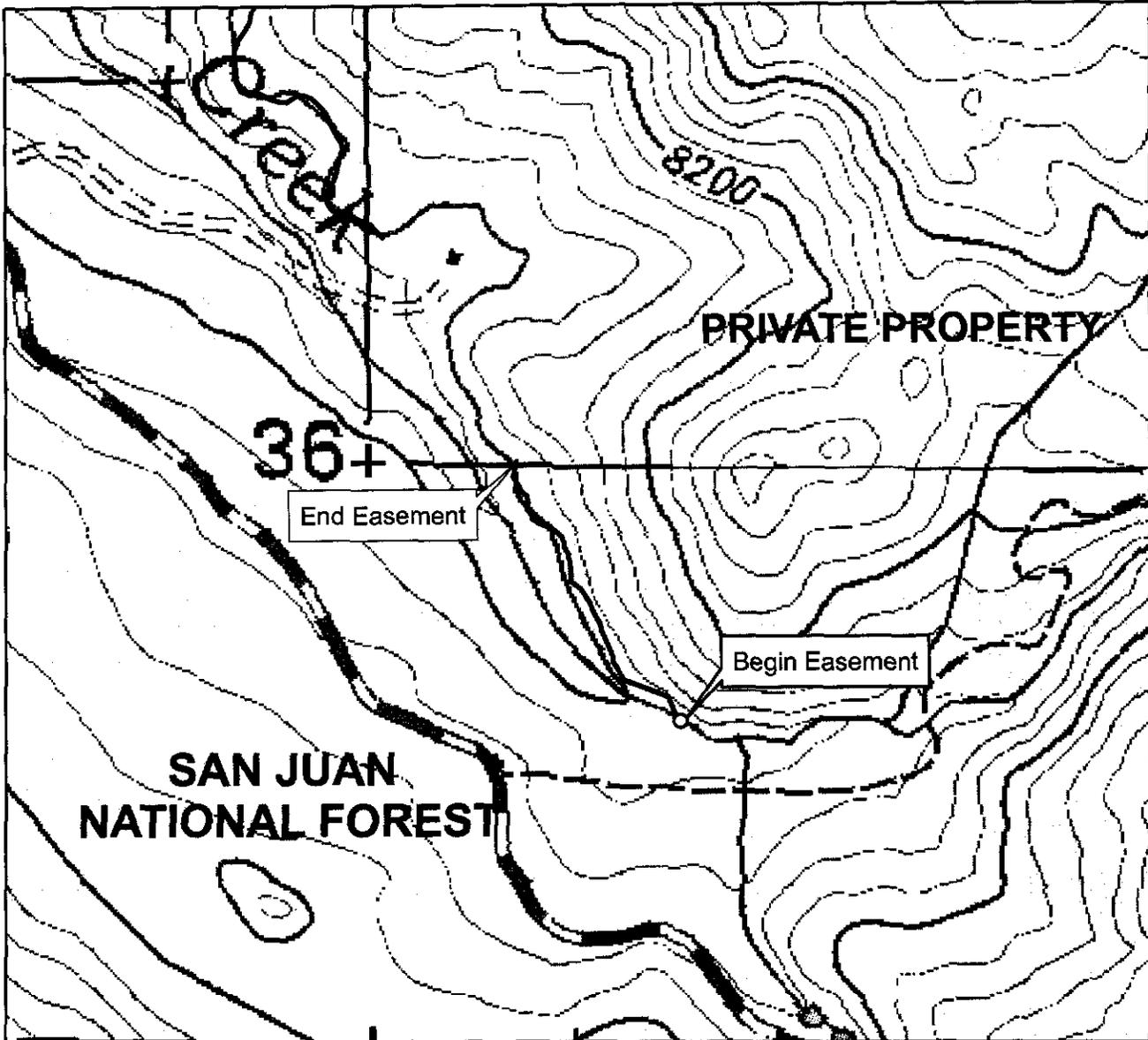
John Patrick White



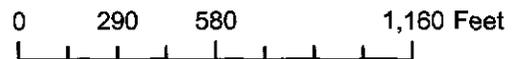
# Exhibit A - Girardin Ditch Map

NW4 SE4 Sec 36, T36N, R1W

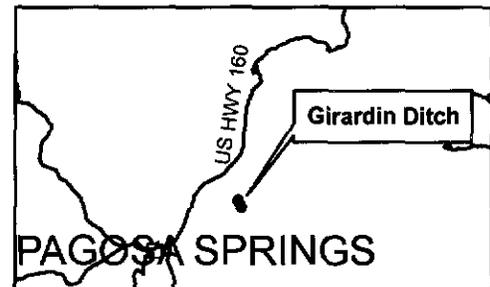
New Mexico PM, Archuleta County, CO



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— Girardin Ditch  
○ Point of Diversion



Prepared by: Amy Schwarzbach  
Ditch Bill Contractor  
Approved by: Cindy Hockelberg  
Forest Land Supervisor

5/1/2007

**Exhibit B**  
**San Juan National Forest**  
Operation and Maintenance Plan

Water Conveyance Facility: **Girardin Ditch**  
Easement Holder: **Billie White Evans**

The Ditch Bill Easement for the above facility incorporates this Operation and Maintenance Plan (O&M Plan) and any attachments thereto. The Holder agrees to operate and maintain the authorized facility and use the occupied National Forest System lands in accordance with the following stipulations:

- 1) Regulate flows so that adequate freeboard is maintained above the high water line of the Ditch. Maintain diversion, headgate, and conveyance structure in good functioning condition and clear of sediment and other debris to ensure proper operation (see Appendix A). The Holder shall maintain a closed headgate during non-irrigating seasons.
- 2) Routine maintenance includes the following practices and tools:
  - i. Any hand tools (eg. shovel, pick, maddox, pulaski, etc.),
  - ii. Chain saw, axe etc. for removal of dead down or dead standing trees that interfere with the ditch operation.
  - iii. Removal of debris from the ditch with nonmotorized equipment.
  - iv. Reinforcement of the ditch berm with nonmotorized equipment.
  - v. Removal of beaver dams, downed trees, and brush that interferes with proper function of the ditch.
  - vi. Placement of rock for reinforcement as needed to control erosion.
  - vii. Increase height of ditch bank so that freeboard is maintained above the high water line.
  - viii. Upon removal of excess sediment, deposit sediment only in upland locations, not into the ditch or natural drainage. Break down dirt clods and revegetate or otherwise stabilize spoil piles according to number 6 below.
- 3) Motorized Access Routes and Motorized Equipment: Use only maintenance routes depicted on the attached map, and only the equipment listed below is permitted. Repair all damage resulting from said use. Unless otherwise approved, motorized vehicles and equipment will not be allowed to operate on or off Forest Service roads when soils are saturated such that ruts 4 or more inches deep are created on un-graveled surfaces, or ruts 1 or more inch deep are created on graveled roads. In the event that larger ruts are created, the Holder will rehabilitate ruts by filling them in, providing drainage and seeding as necessary. For those routes outside of public travel routes, use is approved for water facility operation and maintenance needs only. Holders must have this O&M Plan with them at all times while using routes outside of public traveled routes.
  - Motorized access of ditch channel and headgate by ATV or dirt bike is allowed.
  - Regular maintenance using a tractor, with blade and bucket, not to exceed 10,000 pounds is allowed.

4) Immediate operation and maintenance needs:

- Holder shall contact the local District Ranger to coordinate a weed control plan. Infestations of Canada Thistle, Bull Thistle and Oxeye Daisy were observed along the ditch.

5) The Holder shall be responsible for prevention and control of soil erosion and gullying resulting from operations and maintenance of the granted use. This includes lands identified by the easement, and lands adjacent thereto. Maintain ditch channel to prevent down-cutting and bank failure, remove obstructions from the channel that may cause erosion, and promptly repair pipeline breaks and ditch failures. In the event of an uncontrolled breach of the ditch channel, the Holder will contact the Authorized Officer. The addition of foreign or hazardous materials to the ditch structure is not permitted (eg carpet, appliances, etc.).

6) The Holder shall revegetate or otherwise stabilize all ground where the soil has been exposed, and be responsible for control of and spread of noxious weeds as identified by the USDA Forest Service and the local county weed list. Prior to seeding, dirt clods should be broken up. Areas of disturbance must be seeded with weed free seed of the mix detailed in the chart below. The purpose of seeding is to prevent the introduction of noxious weeds that thrive in disturbed areas. Holder may use non-restricted chemical herbicides for weed control along access route and water facility within the confines of the easement. Strictly follow label instructions in the application of herbicides and the disposal of excess materials and containers.

Species	PLS lbs/acre	Seeds/sq.ft.
Mountain Brome - <i>Bromus marginatus</i> **	6	12.4
Slender Wheatgrass (Wild Rye) - <i>Elymus trachycaulus</i>	4	14.6
Western Wheatgrass - <i>Pascopyrum smithii</i>	4	10.1
Nodding Brome - <i>Bromus porteri</i> (anomalus)**	2	4.1
Arizona Fescue - <i>Festuca arizonica</i> *	0.5	6.3
Spring Wheatgrass (annual) - <i>Triticum aestivum</i> *	5	1.6
Annual Ryegrass - <i>Lolium multiflorum</i>	3	15.6
Totals	24.5 lbs/acre	64.7

\*Omit in those elevations above ponderosa pine.

\*\*Omit if in ponderosa pine

7) The Holder shall inspect the facility prior to use each year and after all major storm events and make necessary repairs. Work other than routine maintenance and/or minor repairs shall be approved in advance with the Authorized Officer. All repairs shall be completed by the date agreed to by the Holder and the Authorized Officer.

8) The Holder will acquire approval from the Authorized Officer before proceeding with work that deviates from routine operations. Examples of these activities include, but are not limited to:

- a) Use of motorized equipment other than that defined above as routine maintenance and as motorized access to ditch (numbers 2, 3, and 4).
- b) Using other than approved maintenance routes for access.
- c) Changes in construction of the facility, including but not limited to, enlargement of the ditch, realignment of the ditch, and installation of a new head gate or segment of pipe.
- d) Removal of significant amounts of vegetation and silt, and deposition of same.
- e) Burning or other means of vegetation control measures.
- f) Removal of live standing trees.

Requests for non-routine maintenance approval should be submitted to the approving officer as soon as the need is identified. Allow a minimum of thirty days for approval. Exceptions may be made for emergency maintenance situations.

9) If any items of archeological, paleontological, or historic value, including but not limited to historic or prehistoric artifacts, structures, monuments, human remains and funerary objects (grave artifacts) are discovered, the Holder will immediately cease operations in the area so affected. The Holder will notify the authorized officer and will not resume operations until the authorized officer provides written approval. Failure to comply with this stipulation may result in civil or criminal penalties under the Archaeological Resources Protection Act of 1979.

10) Habitat Maintenance Requirements: No instream habitat maintenance flows are required. The Holder's water right for this facility provides for a diversion of up to 0.05 cfs of water from Coal Creek. Diversion in excess of this amount is beyond the scope of the easement and may require other forms of land use authorization. Contact the Forest Service Authorized Officer before diverting flows in excess of the above amount.

11) This Operation and Maintenance Plan will be reviewed annually by the Holder and the Authorized Officer. The Authorized Officer may unilaterally revise or modify this Operation and Maintenance Plan pursuant to those circumstances described in paragraph 6(e) of the easement. This Operation and Maintenance Plan may also be amended by mutual agreement when signed and dated by the Holder and the District Ranger.

**Accepted:**

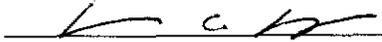
*Billie White Evans*      12-2-07

Billie White Evans

Date

*John Patrick White*

Approved:

      4/11/08  
KEVIN C. KHUNG      Date  
District Ranger  
San Juan National Forest

Approved:

      February 26, 2008  
*For* ~~RICHARD C. STEM~~ *NORA RASURE* Date  
*Acting* Deputy Regional Forester  
Rocky Mountain Region, R-2  
Forest Service, Department of Agriculture

# Appendix A

## Acceptable Headgate & Water Measurement Structures

For most ditches on NFS lands, there are a number of commercially available headgates, splitters, and water measuring devices (flumes, weirs) available by special order from many rural hardware stores. These are acceptable as long as they are properly installed and maintained. These devices have been designed and engineered at the factory. A copy of the manufacture's installation and maintenance instructions should be part of the easement file.

Custom made gates or splitters made of wood or concrete constructed by the permittee are acceptable. Custom made water measuring devices should be designed by and the construction supervised by an engineer certified for such work to reliably measure the volume of water. Larger ditches, headgates and water measuring devices may have to be custom engineered for a given site. Contact the local NRCS office for assistance.

Generally in a gate or measuring device, we are looking for something that

1. Can control and/or reliably measure the amount of water depending on their purpose.
2. Is designed to be relatively permanent (10+ year life).
3. Once stabilized, will not add sediment to natural streams.
4. Does not stop the passage of fish in the natural stream channel, where such passage is currently occurring.

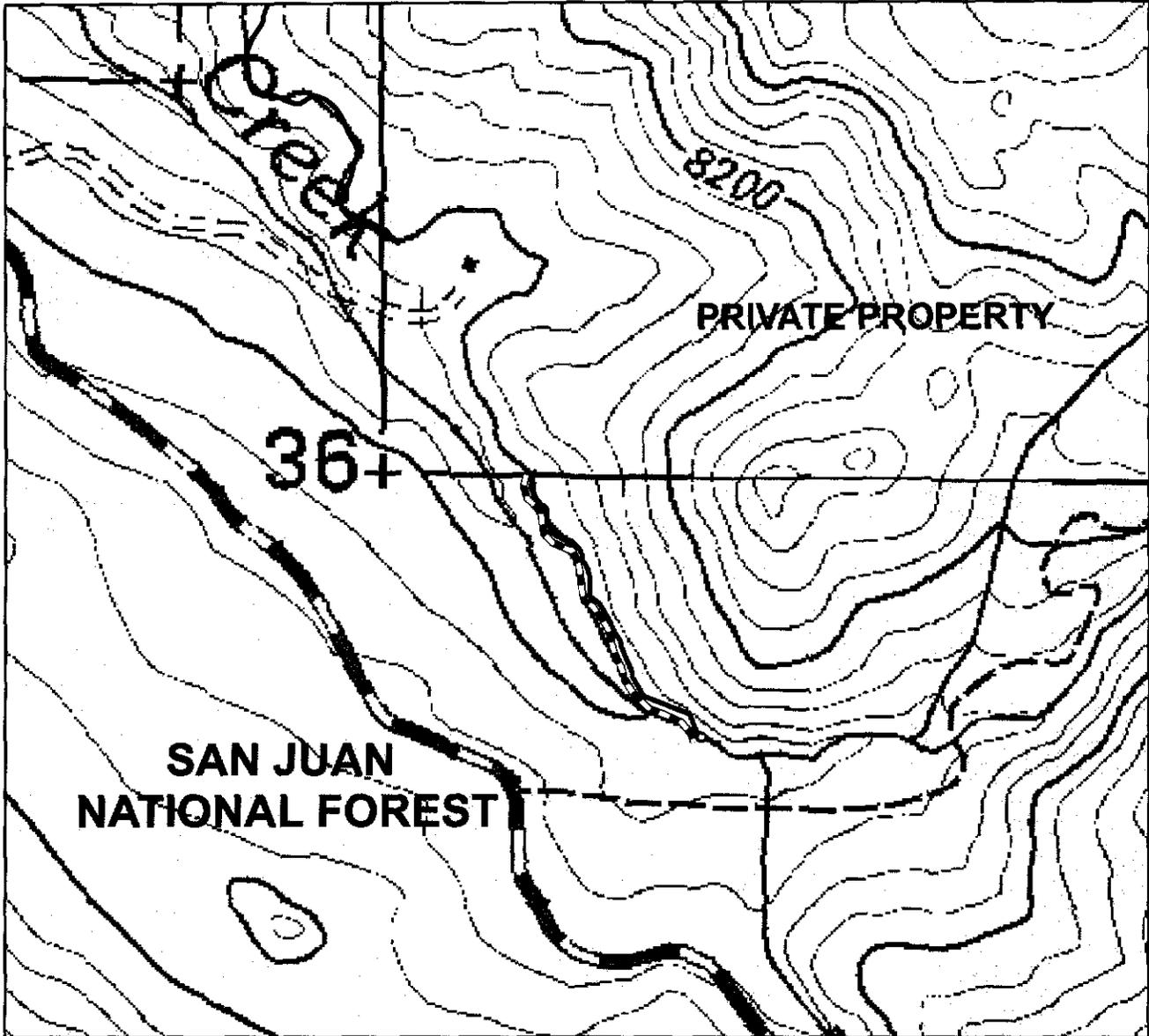
The following are two standard references on headgate and water measurement design for the larger custom facilities

- USDI Bureau of Reclamation - Design of Small Canal Structures
- USDI Bureau of Reclamation - Water Measurement Manual

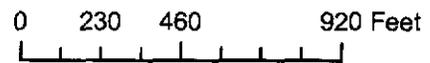
# Girardin Ditch Motorized Access Map

NW4 SE4 Sec 36, T36N, R1W

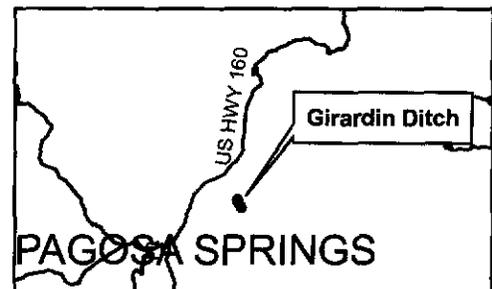
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- Girardin Ditch
- Motorized Access Route



Prepared by: Amy Schwarzbach  
Ditch Bill Contractor  
Approved by: Cindy Hockelberg  
Forest Land Supervisor

5/1/2007