

**Decision Memo – USDA Forest Service
Grand County Irrigated Land Company
Agricultural Irrigation and Livestock Watering System Easement for
Vail Ditch No. 1
Under the Colorado Ditch Bill Act of 1986**

**Arapaho and Roosevelt National Forests & Pawnee National Grassland
Sulphur Ranger District
Grand County, Colorado
September 2009**

I. DECISION

A. Description of Decision

It is my decision to approve the conditioning of an *Agricultural Irrigation and Livestock Watering Easement (Easement)* under the Colorado Ditch Bill Act of 1986, being issued to the Grand County Irrigated Land Company (GCILC), for the purpose of operating and maintaining a water conveyance system known as the Vail Ditch No. 1 (Ditch), and associated headgates and flumes. Conditions will be incorporated into the Easement by way of an Operation and Maintenance Plan and optional provisions. The Ditch is located in Section 16, Township 1 North, Range 75 West, 6th Principal Meridian (PM), Grand County, Colorado (Exhibit A). The Vail Ditch Headgate No. 2 and a large Parshall Flume are located in Section 32, T2N, R75W, 6th PM, Grand County CO, (Exhibit B). Three small Parshall Flumes located on streams that contribute water to the system are also shown on Exhibit C. A 5th flume measuring flow in the Ditch is located on private lands in Section 9, T1N, R75W.

Under the terms of the Act of 1986, this Easement will be granted without fees.

The Ditch is owned and operated by the GCILC, and provides water to several agricultural users who own shares in the GCILC, to irrigate private lands near the town of Granby, CO. The water conveyance system is comprised of the constructed segment of Ditch in Section 16, as described above, a portion of unconstructed ditch in Sections 8 & 9, T1N, R75W, where water leaves private land after being dumped over a hydrologic divide, and then through Strawberry Creek, to Vail Ditch No. 2, which is on public lands administered by the Bureau of Land Management (BLM). The portion being authorized by an Easement is that within Section 16, plus 4 flumes and two headgates, as described above. The Ditch lays within a 60-foot wide right-of-way, 30 feet either side of centerline, including cuts and fills. Water is diverted from Meadow Creek by a headgate located on National Forest System (NFS) lands. The purpose of Headgate No. 2 is to allow water to pass to the Walden Hollow Ditch, constructed in 1903, as well as to send water for GCILC downstream on Strawberry Creek. The section of Ditch being authorized under the Easement has a well constructed bank suitable for foot travel, but not for ATV access. Maintenance is often performed by driving a backhoe or small dozer in the Ditch itself when it is dry. The ditch, headgates and flumes are accessed from National Forest System Road's (NFSR) 129, 853.1, 853.4, 850.1, and National Forest System Trail (NFST) N9.2. ATV's are used on roads and trails closed to public

motorized use. Use of access roads and trails for the Ditch will be authorized through a separate special use authorization, issued at the Forest level.

The water right associated with the Ditch is 65.94 cubic feet/second as appropriated on September 22, 1909 and adjudicated on August 3, 1911.

Conditions authorizing the following items will be imposed for the operation and maintenance of the Ditch and associated headgates and Parshall flumes.

- Noxious weed treatment and prevention
- Field inspection prior to any earth disturbing activities around headgates and flumes, for threatened, endangered and sensitive (TES) plant species.
- Review of operations on private land in Section 9T1N, R75 W, 6th PM, Grand County, CO, to determine methods to reduce erosion which is likely affecting Strawberry Creek on NFS lands.
- Felling of dead lodgepole pine and spruce trees, as needed, within the right-of-way, to prevent damage to the Ditch, and cut and fill slopes along the ditch banks. Trees will be felled in an orderly manner so they are not "jack-strawed", and will be bucked into 10 foot lengths and limbed. Limbs will be scattered to a depth of 18" or less. Dead trees outside of the right-of-way may be felled on a case by case basis, if it appears they are a threat to the Ditch.
- Saplings and shrubs on the ditch bank may be cut and scattered.
- Blasting may occur if absolutely necessary, to remove large boulders from the ditch.
- Use of a backhoe or small dozer will be permitted within the ditch profile, for cleaning out sedimentation, rocks and debris. Heavy equipment brought in to the Easement area will be power washed prior to bringing it to NFS lands.
- Require acceptance of a Recovery Agreement from the U.S. Fish and Wildlife Service (USFWS).
- Carry forward requirements from the existing special use permit pertaining to stream channel and bank protection, and water release control.

B. Purpose of Decision

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 TES species. The purpose of this decision is to document any environmental concerns associated with the operation and maintenance of the Ditch, and its potential affect 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 system.

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an Environmental Impact Statement (EIS) or Environmental Assessment (EA) 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 36 CFR 220.6(e), 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 on the Sulphur Ranger District in Granby, Colorado.

A. Category of Exclusion

The project is within the category of exclusion in 36 CFR 220.6(e) (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.*

The segment of Ditch in Section 16 was on State of Colorado lands at the time it was constructed. The land was conveyed to the United States through a land exchange on 12/06/1936. The lands were acquired by the United States "subject to all rights-of-way heretofore granted and now in full force and effect." That included a Right-of-Way Grant from the State of Colorado No. 1514. GCILC has been advised that upon acceptance of this Easement, they must relinquish Right-of-Way Grant No. 1514.

The Ditch has also been authorized simultaneously by a special use permit issued by the U.S. Forest Service on January 7, 1969. Issuance of the Easement will supersede this permit with regard to the Ditch in Section 16, Headgate No. 1 and Headgate No. 2 and flume.

B. Relationship to Extraordinary Circumstances

There are no conditions that would constitute a significant effect on an extraordinary circumstance related to the proposed Easement. This conclusion is based on evaluation of the following items:

1. *Federally listed Threatened, Endangered, Proposed and Forest Service Sensitive Species or their Critical Habitat (Endangered Species Act: Section 7.)* – A Biological Report for Wildlife was prepared and approved on January 22, 2009, for this Easement application. The Summary of Determinations on page 22 of the report shows:

- A determination of "May Affect, Not Likely to Adversely Affect" for Canada lynx, a threatened species.

- A determination of No Impact for the American three-toed woodpecker, bald eagle, boreal owl, greater sage grouse, northern goshawk, northern harrier, olive-sided flycatcher, American marten, North American river otter, North American wolverine, pygmy shrew, boreal toad and northern leopard frog.

Recommendations for protection of wildlife and plant species habitat:

- Include a requirement to control noxious weeds along the Vail Ditch. Canada thistle and oxeye daisy are present.

A Biological Evaluation (BE) was prepared for fish species. The determination in the BE was "No Impact" for the Mountain sucker and the Colorado River cutthroat trout.

A Biological Assessment (BA) dated January 23, 2009, was prepared for four down stream fish species, listed as Federally Endangered. The fish species are: bonytail chub, Colorado pikeminnow, humpback chub, and razorback sucker. The BA provided a determination of "Likely to Adversely Affect" for all four species. A Biological Opinion dated May 21, 2009, was received from the U.S. Fish and Wildlife Service (USFWS) stating the proposed action would not jeopardize the four endangered fish species if certain terms and conditions were met. To comply with these terms and conditions, each Easement Holder has accepted a Recovery Agreement, in which they have enter into an agreement with the USFWS to support recovery operations for the four down stream fish species. The USFWS Recovery Program was intended to be the reasonable and prudent alternative for individual projects to avoid the likelihood of jeopardy to the endangered fishes from depletions from the Upper Colorado River Basin.

A letter to the file for TES plants was prepared on 11/17/2008. The letter states that there were no occurrences or suspected occurrences of threatened, endangered, proposed or sensitive plant species in the project area. No consultation with the USFWS was required. Suitable habitat for several Forest Service Sensitive species, and species of local concern was located. Recommendations made will be included in the easement language.

An effects determination of "No Effect" is warranted for Threatened and Endangered plants. An impacts determination of "may adversely impact individuals, but not likely to result in a loss of viability on the Planning area, nor cause a trend to federal listing" is warranted for sensitive plans in the project area.

2. *Floodplains and Wetlands* – A Hydrology Report was prepared by the District Hydrologist, dated May 11, 2009. Recommendations were made for road maintenance, repair of the existing flume on private lands (done in fall 2007), repair of leaks (done-fall 2007), and removal of trees from the ditch as they blow down. The report recommended that two intersecting tributaries that are captured by the Ditch be allowed to by-pass, and that the first flume be moved closer to the diversion point on Meadow Creek. One of the tributaries is on private land, as is the flume. The State Water Commissioner stated that the tributaries and flume are historic uses and allowed through their regulations. The GCILC states that the inflow from these two points is included in their water right, and also that a water court decision in or around 1949 determined the location of the flume

on the Ditch in Section 9. The GCILC will not be required to move the flume or bypass the two intersecting tributaries. There are no significant effects on floodplains or wetlands.

There is headcutting occurring on Strawberry Creek, likely from the additional water being put into the natural stream channel over the decades of operation. Clauses from the existing special use permit pertaining to protection of stream banks and control of water release will be included in the operation and maintenance plan.

3. *Municipal Watersheds* – All National Forest System lands are sources of water for municipalities. Continued use of this water for irrigation purposes will have no effect on a public water supply; therefore there are no effects on this circumstance.

4. *Congressionally Designated Areas* - The diversion point on Meadow Creek is very close to the boundary of the Arapaho National Recreation Area (ANRA), but there will be no effect on the ANRA, or any other Congressionally designated area.

5. *Research Natural Areas and Inventoried Roadless Areas* – The project area lies within the Tabernash Geographic Area, which does not have any Research Natural Areas in it, therefore there will be no effects on this circumstance.

The Vail Ditch appears to be the dividing line for the Indian Peaks Adjacent Inventoried Roadless Area (IRA). No buffer zones are required for IRA's. Because this project area is outside the boundary of an IRA, the project will have no effect on this circumstance.

6. *Native American Religious or Cultural Sites, or Areas* – The Vail Ditch was reviewed by the Forest Archaeologist. Her findings are documented in a letter dated July 22, 2009. There are no known American Indian religious or cultural sites, or archaeological sites in the project area. Therefore, there will be no effect on this circumstance as a result of this project.

7. *Archaeological Sites or Historic Properties or Areas* – The Forest Archaeologist has made a determination that issuance of the Easement will not have the potential to adversely affect historic properties as defined by the National Historic Preservation Act. No consultation with the State Historic Preservation Office will be necessary. Per a letter dated July 22, 2009, the Sulphur Ranger District has no further obligations under Section 106 of the National Historic Preservation Act, provided that the project area or methods of implementation are not modified. Therefore, there will be no effect on this circumstance as a result of this project.

III. OTHER RESOURCES CONSIDERED

A. Invasive species

Sporadic populations of Canada thistle and oxeye daisy were found within the Ditch right-of-way. The Holder will be required to begin treatment of these invasive species in 2010, and continue treatment on an annual basis until they are eliminated. The Easement will contain specific conditions concerning prevention and management of

invasive weed species. These conditions govern use of certified weed-free seed, hay, and mulch, treatment of invasive species, and cleaning of any equipment brought to the site to be sure it is free of invasive plant species.

B. Soil Erosion

The Ditch and diversion areas were examined for erosion problems. There are a few places along the bank where there have been previous blowouts and gullyng. There is severe erosion caused by the Ditch where it is dumped over the hydrologic divide on private land. This erosion may be the cause of sedimentation on NFS lands down stream. While we have no authority to impose conditions for operations on private lands, this does not allow the Holder to impact NFS lands because of erosion on private lands. Recommendations will be made to the Holder to investigate options for reducing erosion on private lands that may be causing harm to NFS lands.

C. Access

There are multiple access routes to the ditch, headgates and flumes. These are currently authorized under the terms of a special use permit dated January 7, 1969. Access routes will be reviewed and authorized under a separate decision at the Forest level. None of the access routes are in Inventoried Roadless Areas.

D. Vegetation Management

Due to a widespread mountain pine beetle epidemic, the majority of the mature lodgepole pine along the ditch are dead. Also, there has been no vegetation management along the ditch bank for several years. GCILC will be authorized through the Operation and Maintenance Plan to remove dead trees within the right of way that are in danger of falling into the ditch, or falling and tearing out the ditch bank. They will also be allowed to remove shrubs and saplings from the ditch bank as needed. Spruce trees will not be removed unless absolutely necessary to protect the ditch bank from failure.

IV. SCOPING

Processing of the Easement has been listed in the Arapaho & Roosevelt National Forests and Pawnee National Grassland (ARP) Schedule of Proposed Actions since July of 2008.

A scoping letter was sent out to potentially interested parties on January 10, 2009, requesting public input on the operation and maintenance of the Vail Ditch No. 1 and the Vail Ditch No. 2 headgate. The following responses were received.

1. Denver Water commented and stated that the location of the structures and use of roads for access will not interfere with Denver Water's property interests or operations in the area.
2. The Bureau of Land Management responded that they had no concerns.

3. Andrew Miller, of Lonesome Hut LLC, responded with concerns about wetlands impacts from one of the roads used to access the Ditch and the flume on private lands. **Response:** *Access routes will be addressed under a separate decision.*
4. Mike Wajac-Grand County Mutual Ditch and Reservoir Company, called to inquire how the issuance of the easement would affect their shares of the Grand County Irrigated Land Company. **Response:** *That would depend on how they choose to use their water. The water conveyed through any ditch authorized under the Ditch Bill Law must be used for agricultural or irrigation purposes.*
5. Mr. Wendell Funk had several comments. He stated that there should be no loss of public lands. **Response:** *This action will not convey ownership of public lands. He stated that these types of authorizations should have a time limit, but should be renewable. Response: Forest Service direction provides that these types of authorizations have no expiration date; however the operation and maintenance of the ditch must meet certain criteria to be qualified for an easement under the Ditch Bill Law.*
6. Ms. Patricia DeChristopher, representing the GCILC, wrote to state that they did not believe any additional conditions on the easement were necessary, other than those previously discussed with the Forest Service on a field trip in August, 2008, and those identified in a letter dated February 6, 2009. **Response:** *These operation and maintenance items will be included in the easement language, as well as other recommendations documented in this decision.*

V. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

Federal Land Policy Management Act of 1976 (FLPMA) as amended by Public Law 99-545, of October 27, 1986 (Colorado Ditch Bill): The Colorado Ditch Bill Act directed the Secretary of Agriculture to issue permanent Easements to owners of certain qualifying water development facilities used to divert water for agricultural irrigation and/or livestock watering purposes on NFS lands in 17 western states. These facilities include ditches, reservoirs, pipelines, canals, etc. The Vail Ditch No. 1 and associated flumes and headgates meet the eligibility requirements for an Easement under this authority.

Forest Plan Consistency (National Forest Management Act) - This Act requires the development of long-range land and resource management plans (Forest Plans). This project was evaluated under the guidance of the 1997 Revision of the Land and Resource Management Plan for the ARP. The Forest Plan provides guidance for all natural resource management activities on the Forest. The Act requires that all projects and activities be consistent with the Forest Plan.

The project area lies within the Tabernash Geographic Area, and Management Area 1.3 Backcountry Recreation. The Forest Plan Desired Condition states that special uses shall be allowed if compatible with Backcountry Recreation. This decision is not about allowing the use, which has been in place for almost 100 years, but how to condition it.

There are no conditions necessary along the Ditch or at the headgates and flumes to make this use compatible with backcountry recreation. Access methods are the only aspect that may be of concern to backcountry users, and that topic will be addressed in a separate decision.

Environmental Justice (Executive Order 12898) – This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act – This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Effects of Alternatives on Social Groups – There will be no effects on minorities, Native Americans, women or the civil liberties of any other American citizen.

Effects of Alternatives on Prime Rangeland, Forest Land and Farm Land – The proposal presented is in compliance with Federal Regulations for prime range, forest and farm lands. The definition of prime forest land does not apply to lands within the ARP. There are private agricultural lands adjacent to the NFS lands where the project area lies, and the Ditch provides agricultural irrigation to those lands. The Ditch is beneficial to these adjacent private agricultural lands.

Energy Requirements and Conservation Potential of Alternatives – The energy required to implement the proposal in terms of petroleum products would be insignificant when viewed in light of the production costs and effect of the national world wide petroleum reserves. Very little petroleum-based energy will be expended in the operation and maintenance of this water conveyance system.

Air Quality – This project will have no effect on air quality. There will be minor use of motorized equipment for maintenance of the ditch, and minimal dust created from operation and maintenance of the system.

Wild and Scenic Rivers Act – There are no designated Wild or Scenic Rivers on the Sulphur Ranger District, therefore this project will not affect any such rivers.

VI. ADMINISTRATIVE REVIEW OR APPEAL

This decision is not subject to a higher level of administrative review or appeal pursuant to 36 CFR 215.12(f).

VII. IMPLEMENTATION DATE

This decision may be implemented immediately. An Easement will be issued under the terms of the Colorado Ditch Bill Act, with terms and conditions necessary to protect the environment from degradation.

VIII. CONTACT PERSON

Further information about this decision can be obtained from Patricia Hesch, Lands Staff at the Sulphur Ranger District, 9 Ten Mile Drive, P.O. Box 10, Granby CO 80446; Phone (970) 887-4136; FAX (970) 887-4102, or electronically at phesch@fs.fed.us.

IX. SIGNATURE AND DATE

I have concluded that this decision may be categorically excluded from documentation in an EIS or EA as it is within category 36 CFR 220.6(e)(15), and there are no extraordinary circumstances related to the decision. My conclusion is based on information presented in this document and the entirety of the Planning Record.



For ANTOINE DIXON
Deputy Regional Forester
Rocky Mountain Region, R-2
Forest Service, Department of Agriculture

June 22, 2010
Date

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Exhibit C: Grand County Irrigated Land Co.
 Agricultural Irrigation & Livestock Watering Easement SUL 367
 Vail Ditch No. 1 Flumes
 SE1/4 Sec. 32, T2N, R75W; NE1/4 Sec. 5, T1N, R75W; NE1/4SE1/4 Sec. 8, T1N, R75W,
 6th PM, Grand Co., CO

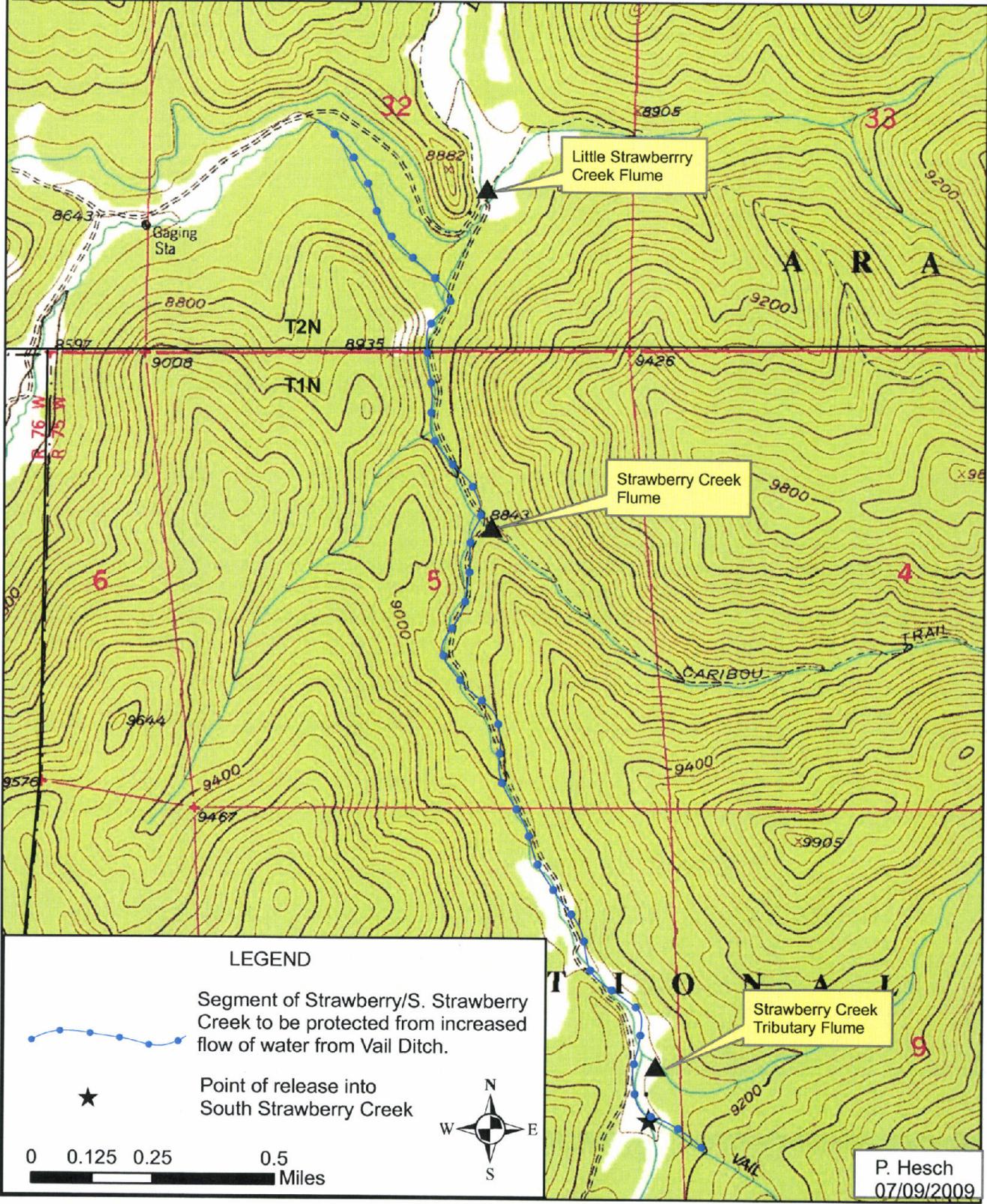
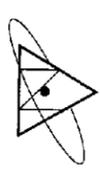
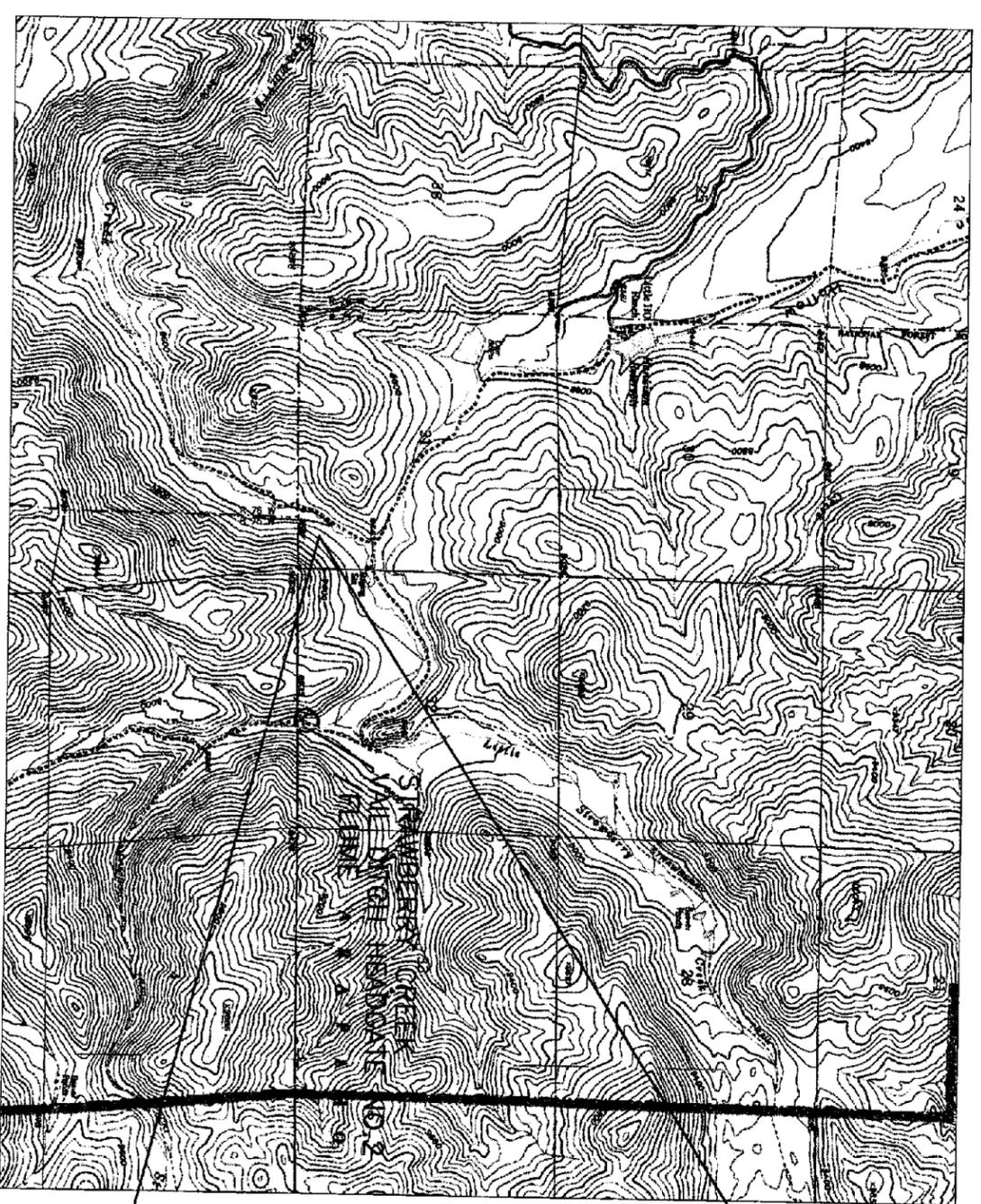


Exhibit B: Grand County Irrigated Land Company
 Vail Ditch Headgate No. 2 & Flume



NO SCALE

Through Section 16
 T1N, R75W, 6TH P.M.
 Grand County, Colorado
 & Point of Diversion, Vail
 Ditch Headgate No.2
 In Sec. 32, T2N, R75W.



DETAIL:
 STRAWBERRY CREEK -
 VAIL DITCH HEADGATE NO.2
 BEARS S84°40'W, 57.7' -
 FROM SOUTHWEST CORNER
 SECTION 32, T2N, R75W, 6TH PM
 A FLUME BEARS N60°00'W, 81'
 FROM HEADGATE



P.O. Box 585 Granby, CO 80446
 Phone (970) 531-0058
 (970) 887-0453

Exhibit B: Grand County
 Irrigated Land Company
 Vail Ditch Headgate No. 2
 & Flume

11-18-08 JOB 08024 In SEC 32 T2N R75W 6TH PM