DECISION MEMO

Agricultural and Livestock Water Conveyance System Authorizations
for
Piney Valley Ranches Trust

Six Facilities Under the Act of October 27, 1986
One Facility Under the Act of October 21, 1976

White River National Forest
Region 2, USDA Forest Service

I. DECISION

A. Description of Decision

I have determined that the applicant and facilities listed on the attached Exhibit A qualify for Ditch Bill easements, 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.

The applicant caused extensive modification of several of the ditches without authorization. An approved remediation plan was prepared in 2007. This remediation plan was partially implemented in 2010 and will continue to be implemented in 2011 by the applicant. Ditch Bill Easements will be issued in 2011 for the Schlegel, Frazier, North Piney and Russell Nos. 2, 3 and 4 Ditches. The O&M Plan, which is Exhibit B, of the Ditch Bill easement issued for the North Piney Ditch contains a condition in Stipulation 2 requiring remediation work to be completed no later than September 1, 2011.

The Lava No. 2 Ditch was applied for as a Ditch Bill easement by Piney Valley Ranches Trust. It is located in sec. 15, T. 3 S., R. 82 W. on Lava Creek. This ditch was subjected to the same analysis as the other ditches covered by this Decision Memo. Since this ditch supplies water to a pasture on NFS land, it was determined to authorize this ditch as a range improvement as part of a grazing allotment under the authority of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701; 90 Stat. 2743) (FLPMA).

B. Purpose of Decision

The Act of October 27, 1986 (P.L. 99-545), amended Title V of 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.

Each facility stands alone and is evaluated individually. The applicant applied for easements under the Colorado Ditch Bill. It has been determined that the applicant and associated facilities meet all the requirements of the Colorado Ditch Bill and therefore as required by law, 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 qualify under one of the categories found at 7 CFR 520.5 or under one of the categories found at 36 CFR 220.6(d) and (e), 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 36 CFR 220.6(e). 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 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 or an extraordinary circumstance related to the proposed authorization. This conclusion is based on evaluation of the following items:

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, Wetlands and 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 easement holder's property. The water conveyance and storage infrastructure occupies a relatively small percentage of floodplains and should have no effect on flood stage.

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
- Stipulations have been included for future resource conservation

Municipal Watersheds: This decision will not affect municipal watersheds.

3. *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.

4. *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.

5. *Research Natural Areas*

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

6. *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 Gullying

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 gullying. 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 gullying 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.

c. 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. 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 2006 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.
- A mailing addressing the proposed action was sent to potentially interested or affected organizations and individuals on August 16, 2006. 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.

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.

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 Bill Johnson, Realty Specialist, White River National Forest, P.O. Box 720, Eagle, CO 81631; Phone (970) 328-5869.

Responsible Official Signature

Randall Kaistaedt

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

February 4, 2011
Date

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Federal Land Policy Management Act of 1976 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.

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.

EXHIBIT A:
White River National Forest
Ditch Bill Cases for
2010 Decision Memo

	DITCH BILL EASEMENT NUMBER	FACILITY	LEGAL DESCRIPTION	STREAM	COUNTY
1	HOL317	Russel No. 2 Ditch	T4S, R82W, NE1/4 Sec 1	S. Fork Piney Cr.	Eagle
2	HOL319	Russel No. 3 Ditch	T3S, R82W, E1/2 Sec 36	S. Fork Piney Cr.	Eagle
3	HOL318	Russel No. 4 Ditch	T3S, R82W, SE1/4 Sec 25	S. Fork Piney Cr.	Eagle
4	HOL321	Schlegel Ditch	T3S, R82W, Sec 25,26 & 36	W. Fork Piney Cr.	Eagle
5	HOL316	North Piney Ditch	T3S, R82W, N1/2 Sec 23	Piney Creek	Eagle
6	HOL312	Frazier Ditch	T3S, R82W, NE1/4 Sec 20	Cole Black Creek	Eagle