

USD05CAR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **EASEMENT (AGRICULTURE IRRIGATION AND LIVE STOCK WATERING SYSTEM)**

NAME OF PROPERTY OWNER OR GRANTOR: U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE

PURPOSE/PROJECT NAME: CITY BYPASS DITCH, CARSON LAKE AND DITCH BANK TRAIL, AN "L" SHAPED CONCRETE STRUCTURE WITH TWO 36 INCH SLIDE GATES ON SOUTH LEG THAT CAN BE CLOSED TO ALLOW WATER TO FLOW INTO WEST LEG OF STRUCTURE AND DOWN BYPASS DITCH. A MAINTENANCE TRAIL FOLLOWS ALONG THE TOP OF THE DITCH BANK FOR THE FULL LENGTH. IT IS A TWIN TRACK TRAIL WITH MINIMAL LAND DISTURBANCE APPROXIMATELY TEN FEET WIDE. THE DITCH IS 10 FEET WIDE AT BOTTOM, 3 FEET DEEP WITH 1:1 ½ BANK SLOPES

LOCATION: CARSON – HOGCHUTE RESERVOIR

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2005

EXPIRATION: NONE

DESTRUCTION: NONE

Authorization ID: CGJ243
Contact ID: CJ_CITY
User Code: 916

FS-2700-9a (08/04)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
Forest Service
AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT
Act of October 21, 1976, Act of October 27, 1986
(Pub. L. 99-545), 36 CFR 251, Subpart B**

THIS EASEMENT issued this 10th day of FEBRUARY, 2005, by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to **CITY OF GRAND JUNCTION**, a municipality, 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 Grand Mesa National Forest, in the County of Mesa, State of Colorado. The description of the authorized facilities is as follows:

Project Name: City Bypass Ditch – Carson Lake and ditch bank trail

Location (legal description): NE¼SW¼, SE¼NW¼, S½NE¼ Section 22, T. 12 S., R. 96 W., 6th Principal Meridian, Colorado

Description of Improvements: An "L" shaped concrete structure with two 36 inch slide gates on south leg that can be closed to allow water to flow into west leg of structure and down bypass ditch. A maintenance trail follows along the top of the ditch bank for the full length. It is a twin track trail with minimal land disturbance approximately ten feet wide. The ditch is 10 feet wide at bottom, 3 feet deep with 1:1½ bank slopes

Length of Easement (for linear featured facilities): Approximately 3,000 feet

Width of Easement (for linear featured facilities): Approximately 40 feet, 20 feet each side of centerline

Area of National Forest System Lands Occupied: 2.75 acres

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 approximately shown on the map (plat) 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. Holder shall notify 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. 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. Holder shall notify, consult with, and obtain concurrence of the Grantor for operation and maintenance of the authorized facilities.
- c. 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. Holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the Grantor.
- e. Holder agrees to operate and maintain the facilities and use the authorized easements in accordance with the attached operation and maintenance plan.
- f. 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 (e) 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.

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. 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, 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 Grantor had required the Holder to furnish a bond or other security.

8. INDEMNIFICATION. Holder shall indemnify the United States against liability for any and all injury, loss, or damage, including fire suppression costs, that the United States may suffer as a result of claims, demands, losses, or judgements caused by the Holder's use or occupancy under this easement.

9. LIABILITY. Holder is liable for and agrees to repair damage to National Forest System lands caused by Holder's negligence, intentional acts, or of failure to comply with the terms and conditions of this easement or of any law or regulation applicable to the National Forests.

10. SITE RESTORATION. Holder shall, upon termination of this easement, stabilize the site as required by the Grantor. If Holder does not stabilize the site, the Holder agrees to pay the costs of such stabilization if undertaken by the Grantor.

11. SPECIAL PROVISIONS.

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

A. 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.

B. TERMINATION. This easement may be terminated with consent of Holder, or if Holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement expires according to its terms if Holder uses the water conveyance system for any purpose other than agricultural irrigation or livestock watering. Grantor may take action to terminate this easement under 7 CFR 1.130 - 1.151, for noncompliance with applicable statutes and regulations, or the terms and conditions of this easement.

C. COLORADO RIVER DRAINAGE. This easement is issued subject to the Colorado River Compact and the Boulder Canyon Project Act of December 31, 1928 (45 Stat. 1057 et. seq.).

D. NONDISCRIMINATION IN EMPLOYMENT AND SERVICES (B1). During the performance of this authorization, the holder agrees:

1. In connection with the performance of work under this authorization, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. (Ref. Title VII of the Civil Rights Act of 1964, as amended).

2. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex national origin, age, or disability, by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. (Ref. Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments, and the Age Discrimination Act of 1975).

3. The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this authorization.

4. When furnished by the Forest Service, signs setting forth this policy of non discrimination will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

5. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States of the Sate in which the breach or violation occurs.

E. SUPERSEDED AUTHORIZATION (X18). This authorization supersedes one designated: City of Grand Junction, Ditch, issued July 2, 1947 (CGJ101411).

F. WATER RIGHTS (R2-X-103). This authorization confers no right to the use of water by the Holder; such rights must be obtained under State law.

authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing an managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

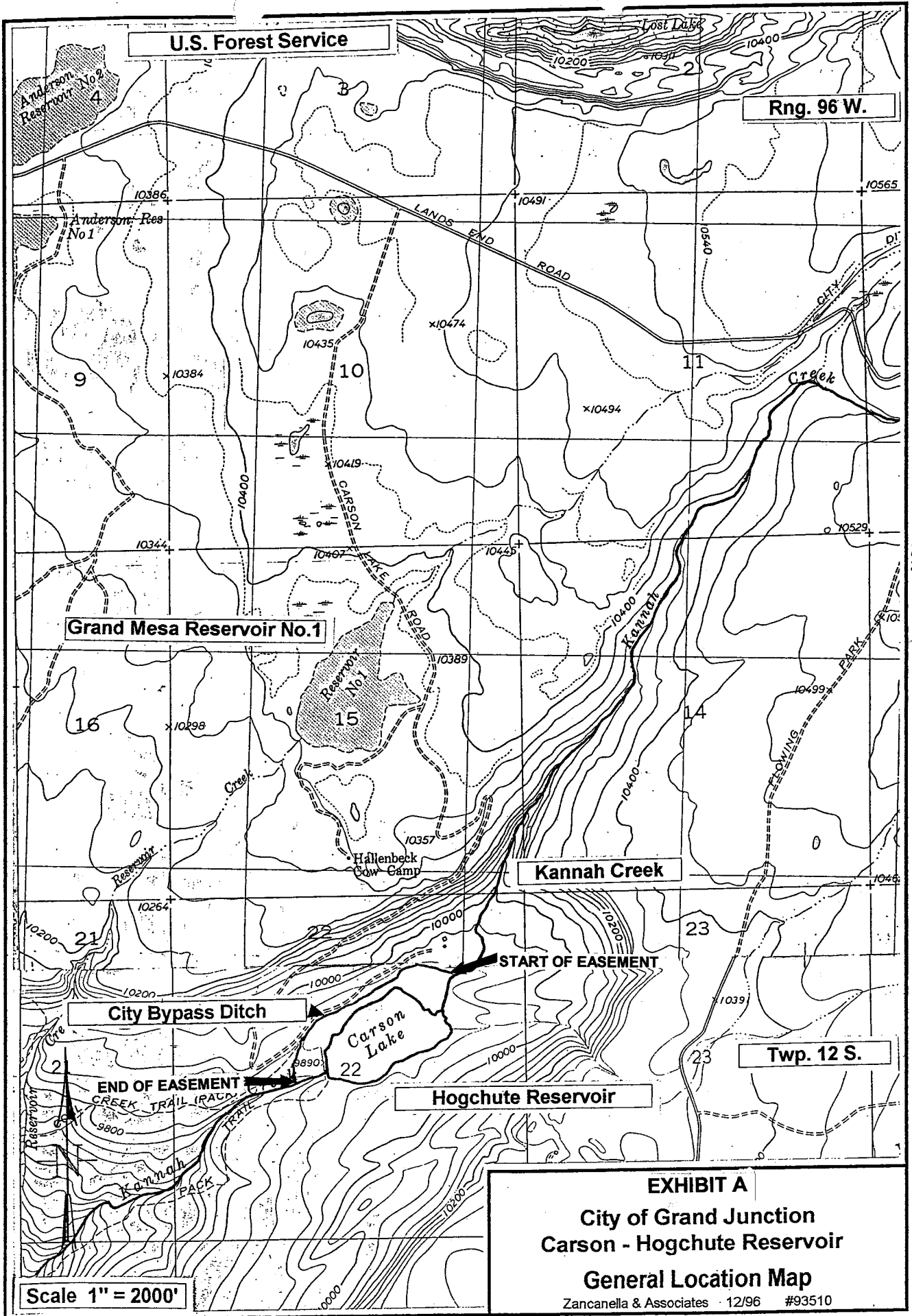


EXHIBIT A
City of Grand Junction
Carson - Hogchute Reservoir
General Location Map
 Zancanella & Associates · 12/96 #93510

RECORDER NOTE: POOR QUALITY DOCUMENT
 PROVIDED FOR REPRODUCTION

EXHIBIT B

OPERATION AND MAINTENANCE PLAN

Water Conveyance Facility: **City Bypass Ditch – Carson Lake Reservoir**
Easement Holder: **City of Grand Junction**

The easement incorporates this Operation and Maintenance Plan (O&M Plan) and any attachments thereto, and the Holder agrees to operate and maintain the authorized facilities and use the occupied National Forest System (NFS) lands in accordance with the following stipulations:

1. Regulate channel flows so that a freeboard is maintained above the water line.
2. Use only maintenance routes and equipment agreed to and to repair all damage resulting from said use.
3. The Holder shall: be responsible for prevention and control of soil erosion and gulying on land covered by the easement and the land adjacent thereto resulting from operations and maintenance of granted use; maintain channel to prevent downcutting and bank failure; remove all obstructions from the channel; 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.
4. The Holder shall inspect the facility prior to use each year and make necessary repairs. Work that is considered other than routine maintenance and/or minor repairs shall be discussed in advance with the Forest Officer. All repairs shall be acceptable to and completed by the date agreed to by the Holder and the Forest Officer.
5. The Holder will contact the Forest Officer for approval before proceeding with work that is other than routine operations. Some of these situations are:
 - a. Bring in and using heavy equipment.
 - b. Using other than approved maintenance routes for access.
 - c. Motorized use in a closed area in an emergency situation.
 - d. Removal of significant amounts of vegetation and silt and deposition of the same, if on National Forest System lands.
 - e. Burning, application of seed mixtures (weed-free seed required), chemical application or other means of vegetation control measures.
 - f. Reconstruction or re-routing of a portion of the ditch (the latter would also entail a new authorization).
6. If any items or archaeological, paleontological, or historic value, including but not limited to historic or prehistoric artifacts, structures, monumnets, 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.
7. This O&M Plan will be reviewed annually by the Holder and may be amended by mutual agreement when signed and dated by the Holder and the District Ranger.


Water Services Superintendent

2-1-05
Date


District Ranger

2-2-2005
Date


Reviewed: Director, Physical Resources

2-10-2005
Date