

USF05BRA

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	EASEMENT
NAME OF PROPERTY OWNER OR GRANTOR:	US DEPARTMENT OF AGRICULTURE FOREST SERVICE
PURPOSE:	AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT FOR BRANDON DITCH (GV011)
ADDRESS:	GRAND MESA NATIONAL FOREST
CITY DEPARTMENT:	UTILITIES, STREETS, FACILITIES
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

Authorization ID: CGJ241  
Contact ID: GJ\_CITY  
Use Code: 916

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

THIS EASEMENT issued this 5th day of May, 2006 by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called the grantor, to **CITY OF GRAND JUNCTION**, a municipal corporation of the State of Colorado, hereinafter called the Holder.

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:

**Brandon Ditch (GV011)**

- Location (legal description): NW1/4 NE1/4, N1/2 NW1/4 Section 8, T. 12 S., R. 97 W., 6th P.M., Colorado
- Description of Improvements: earthen ditch with diversion off Whitewater Creek.
- Length of Easement: approximately 3,619 feet
- Width of Easement: approximately 20 feet wide (10 feet either side of centerline)
- Area of National Forest Lands Occupied: approximately 1.7 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. Special Provisions.

A. 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.

B. Disputes (X-96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFS 251, Subpart C, or revisions thereto.

C. Nondiscrimination in Employment and Services (R2-B-108). During the performance of this permit, the holder agrees that:

1. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, sex (in educational activities), national origin, age or disability, by curtailing or by refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally and that the holder and employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments, and the Age Discrimination Act of 1975.
2. The holder shall include and require compliance with the above nondiscrimination provisions in any third party agreement made with respect to the operations under this permit.
3. Signs setting forth this policy of nondiscrimination to be furnished by the Forest Service will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

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 or the State in which the breach or violation occurs.

In addition to the above non-discrimination policy, the holder agrees to insure that its program and activities are open to the general public on an equal basis and without regard to any non-merit factor.



**EXHIBIT A Page 1 of 2**

**LOCATION MAP**

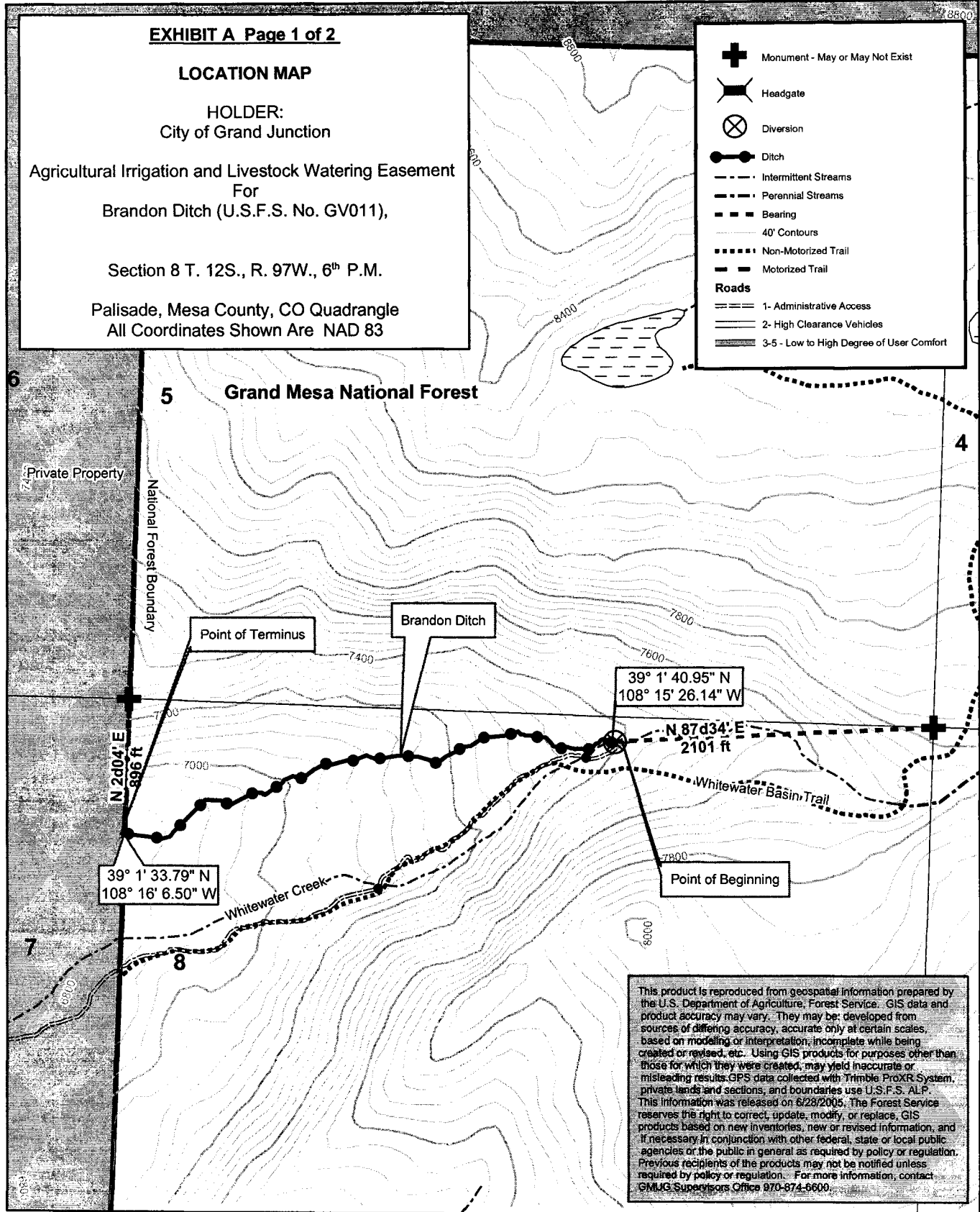
HOLDER:  
City of Grand Junction

Agricultural Irrigation and Livestock Watering Easement  
For  
Brandon Ditch (U.S.F.S. No. GV011),

Section 8 T. 12S., R. 97W., 6<sup>th</sup> P.M.

Palisade, Mesa County, CO Quadrangle  
All Coordinates Shown Are NAD 83

	Monument - May or May Not Exist
	Headgate
	Diversion
	Ditch
	Intermittent Streams
	Perennial Streams
	Bearing
	40' Contours
	Non-Motorized Trail
	Motorized Trail
<b>Roads</b>	
	1- Administrative Access
	2- High Clearance Vehicles
	3-5 - Low to High Degree of User Comfort



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Prepared by: Cheryl O'Brien  
GIS Specialist  
Approved By: Dennis Valdovinos  
Forest Land Surveyor  
10/28/2005

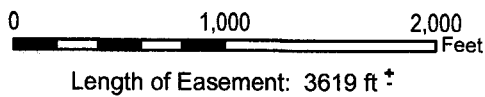


EXHIBIT A (Page 2 of 2)

Description for the Brandon Ditch, Agriculture Irrigation and Livestock Watering Easement (Forest Service No. GV011):

Located in the N1/2 NE1/4 NW1/4, S1/2 NE1/4 NW1/4 NW1/4, SW1/4 NW1/4 NW1/4, Sec. 8, T.12S, R.97W, 6 P.M., the centerline of which is more particularly described as follows:

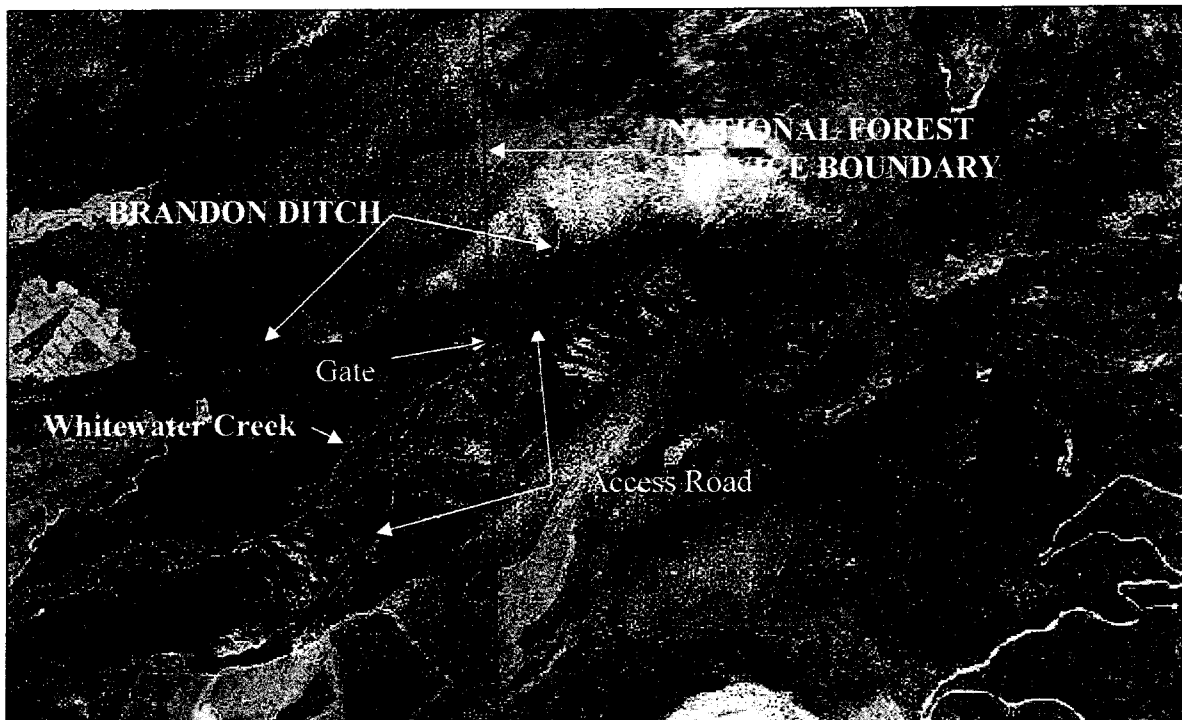
Commencing at the diversion for the Brandon Ditch, the Point-of-Beginning, from which the SE corner of Section 5 (monument may or may not exist) bears N 87° 34' E, 2101 ft., plus or minus; thence 3619 ft., plus or minus, along the centerline of said ditch as depicted on Exhibit A, Page 1 of 2, to the Grand Mesa National Forest boundary, identical with the west line of Section 8, the Point-of-Terminus, from which the SW corner of Section 5 (monument may or may not exist) bears N 02° 04' E, 896 ft., plus or minus. Sidelines to be lengthened or shortened to conform with the respective boundaries. Refer to the official easement document for the easement width and area.

Note: The U.S. Forest Service Automated Lands Program (ALP) which is primarily based upon the BLM Geographic Coordinate Data Base (GCDB), serves as the map base for this description. The land net may or may not agree with the U.S. Geological Survey map, therefore the ALP must be relied upon for this description.

**OPERATION AND MAINTENANCE PLAN  
FOR  
Brandon Ditch  
City of Grand Junction**

The authorization 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 agreed to and shown on the attached map and to repair all damage resulting from said use.



3. The following vehicles will be used to access the ditch for routine inspection: Generally foot traffic. A rubber tired backhoe may be used periodically to repair ditch breaches and maintain ditch, upon which the Forest Service will be notified before proceeding.
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 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.
6. Routine operation and maintenance of this facility generally consists of:



- a. There is no designated access route along ditch bank for motorized travel.
- b. Walking along ditch bank to check for obstructions and breaches with all terrain vehicle.
- c. Brush removal from ditch bottom.
- d. Repair ditch breaches with rubber tire backhoe to maintain water flows after verbal notification to Forest Service.

7. The Holder will contact the Forest Service for approval before proceeding with work that is other than routine operations. Some of these situations are:

- a. Bringing in and using heavy equipment other than that already approved in this O&M plan.
- 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 or amended authorization).

8. 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 appropriate line officer.

For the City of Grand Junction:

Terry Franklin  
TERRY FRANKLIN

Title: Water Services Superintendent

Date: 1-12-05

For the Grand Valley Ranger District:

Connie Clementson  
CONNIE CLEMENTSON

Title: District Ranger

Date: 1-12-05

Randall Krotstad

Approved  
REGIONAL DIRECTOR, PHYSICAL RESOURCES

May 5, 2006  
Date

**Addendum No. 1 to  
Operation and Maintenance Plan  
For  
Brandon Ditch  
City of Grand Junction**

The Operation and Maintenance (O&M) Plan executed by the City of Grand Junction and the Grand Valley Ranger District on January 12, 2005, is hereby amended as follows:

**Add the following to Clause 2 and under the map showing the access route to the ditch:**

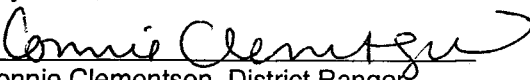
- Use of these routes is approved for water facility operation and maintenance needs only.
- Holders must have this O&M Plan with them at all times when riding these routes.
- Holder is still subject to federal and state laws regulating travel on State, County, and Federal lands. These include Code of Federal Regulations (CFR) 261.13 prohibiting travel in a manner which damages or unreasonably disturbs the land, wildlife and vegetative resources. Violation of the terms and conditions contained herein is punishable by a fine of not more than \$5,000 or imprisonment for not more than 6 months or both (Title 16 U.S.C. 551).
- Operations that involve traveling the above-mentioned roadways, trails or other access to the project shall cease when travel causes rutting 3" or more in depth.
- Any rocks moved to access water facilities shall be placed back following end of operation and maintenance activities.
- Holder shall cut and pull back any downed trees blocking the access routes and shall not leave the trail in order to go around the trees.
- Holder shall perform access route maintenance, including installation of drainage structures, as directed by the Forest Service.

**The following shall be added as Clause 9:**

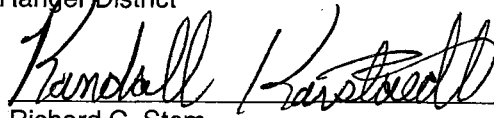

9. If any items of archaeological, paleontological, or historic value, including but not limited to historic or prehistoric artifacts, structures, monuments, human remains and funerary objects (grave goods) are discovered, the Holder shall immediately cease all activities which may disturb such items and notify the Forest Service. The Holder 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.

  
\_\_\_\_\_  
Terry Franklin, Water Services Supervisor  
City of Grand Junction

4-13-06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Connie Clementson, District Ranger  
Grand Valley Ranger District

4-17-06  
\_\_\_\_\_  
Date

Approved by:   
\_\_\_\_\_  
 Richard C. Stem  
Deputy Regional Forester  
Rocky Mountain Region, R-2  
Forest Service, Department of Agriculture

5/5/2006  
\_\_\_\_\_  
Date