

USF06HAL

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	EASEMENT
NAME OF PROPERTY OWNER OR GRANTOR:	US DEPARMTMENT OF AGRICULTURE FOREST SERVICE
PURPOSE:	AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT FOR HALLENBECK RESERVOIR #2 (GV093) AKA RABER – CLICK RESEVOIR
ADDRESS:	GRAND MESA NATIONAL FOREST
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2006
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

RECEIVED

2319234 BK 4165 PG 578-586  
05/26/2006 01:57 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$45.00 SurChgs \$1.00  
FS-2700-9a (08/04) DOC FEE EXEMPT  
OMB No. 0596-0082

Authorization ID: CGJ242  
Contact ID: GJ\_CITY  
Use Code: 925

MAY 22 2006

Grand Valley Ranger District

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 5<sup>th</sup> 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:

**Hallenbeck Reservoir #2 (aka Raber-Click Res.) (GV093)**

Location (legal description):

- T. 12 S., R. 96 W., 6th P.M., Colorado
- Section 8: SE1/4 SE1/4
- Section 9: SW1/4 SW1/4
- Section 16: NW1/4 NW1/4, NW1/4 SW1/4 NW1/4
- Section 17: E1/2 NE1/4 NE1/4

Description of Improvements: earthen dam with masonry spillway. Dam height approximately 26 feet and width approximately 15 feet. Storage capacity approximately 464 acre-feet.

Area of National Forest Lands Occupied: approximately 60 surface 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 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. Dam Safety (B37).

1. Definitions. The following definitions apply to this clause:

a. Qualified Engineer. An engineer authorized to practice engineering in the field of dams in the State where the dam is located, either by professional registration as provided by State law or by reason of employment by the State or Federal Government.

b. Dam Failure. Catastrophic event characterized by the sudden, rapid, and uncontrolled release of impounded water. It is recognized that there are lesser degrees of failure and that any malfunction or abnormality outside the design assumptions and parameters which adversely affect a dam's primary function of impounding water may also be considered a failure.

c. Rehabilitation or Modification. Repair of major structure deterioration to restore original condition; alteration of structures to meet current design criteria, improve dam stability, enlarge reservoir capacity, or increase spillway and outlet works capacity; replacement of equipment.

d. Hazard Potential. The classification of a dam based on the potential for loss of life or property damage that could occur if the structure failed (FSM 7500).

e. Emergency Action Plan. Formal plan of procedures to prevent or reduce loss of life and property that could occur if the structure failed. The plan does not include flood plain management for the controlled release of floodwaters for which the project is designed.

2. Dam Classification. The dam constructed pursuant to this authorization shall be classified according to its height and storage capacity (water debris or both) as well as its hazard potential as follows:

Height and Storage Capacity (A, B, C, or D): C

Hazard Potential (Low, Moderate, High): Moderate

Classification criteria are contained in FSM 7511, which the Forest Service may amend from time to time.

The hazard potential of the dam shall be reassessed at least every five years by a qualified engineer retained by the holder, and this information made available to the authorized officer. The Forest Service may change the hazard potential at any time based on changed conditions or new information.

3. Construction, Inspection, Certification, and Project Files. For construction, rehabilitation or improvement, the holder shall provide for inspection by a qualified engineer to ensure adequate control of the work being performed. At a minimum, the qualified engineer shall maintain a daily inspection diary, descriptions of design changes, and records of construction material and foundation tests.

Upon completion of construction, rehabilitation, or improvement, the holder shall forward to the Forest Service a statement from the qualified engineer responsible for inspection certifying that the works were built in accordance with the approved plans and specifications, or approved revisions thereto. No water shall be impounded until approval is given by the authorized officer.

All design notes, as-built plans, and the aforementioned diaries and records shall be maintained in a project file by the holder for the duration of this authorization, and shall be available to the Forest Service or other inspection personnel (not applicable to debris retention dams).

4. Dam Operation and Maintenance Plans. Dam operation and maintenance plans shall be prepared during the design phase for new dams. The plan(s) shall, as a minimum, describe operating requirements and procedures to be followed for the operation of the structure; routine or recurring maintenance required; record keeping to be performed for operation and maintenance; and individuals responsible for implementing the plans. At the time of the operation and maintenance inspection, the plan shall be reviewed and amended as needed by the individual responsible for implementation and the engineer performing any inspection. No plans or amendments thereto shall be valid until approved by the authorized officer.

5. Dam Emergency Action Plan. The holder shall, during the design phase, prepare an emergency action plan which will include, but not be limited to:

- a. Actions to be taken upon discovery of an unsafe condition or impending failure situation to prevent or delay dam failure, and reduce damage or loss of life from subsequent failure.
- b. Procedures for notification of law enforcement, civil preparedness, and Forest Service personnel.
- c. Procedures for notifying persons in immediate danger of losing life or property.
- d. Maps delineating the area which would be inundated by water, debris, or both in the event of dam failure.
- e. The names of those individuals responsible for activating the plan and carrying out the identified actions.

In preparing the emergency action plan, the holder shall consult and cooperate with appropriate law enforcement and civil preparedness personnel, who may be responsible for implementing all or part of the plan. Emergency action plans shall be reviewed and updated annually, and tested at intervals not exceeding five years.

6. Inspection and Maintenance of Dams. The holder shall have the dam and appurtenant structures inspected by a qualified engineer to determine the state of operation and maintenance at least every three year(s). An inspection shall also be made following earthquakes, major storms, or overflow of spillways other than the service spillway. Two copies of the inspection report shall be provided to the authorized officer within 30 days of the date of inspection.

Repairs or operational changes recommended by the inspecting engineer shall be made by the holder within a reasonable period of time following the inspection, but in no event later than one year from the inspection (unless a longer period of repairs is authorized in writing, or a shorter period is required when such repairs are deemed by the authorized officer as immediately required for reasons of public safety). Upon request by the authorized officer, the holder shall provide a plan of action outlining planned time and methods

for performing said repairs or operational changes, and notify the authorized officer when actions are completed. The authorized officer shall specify a completion date for corrective work. If corrective action is not taken by the date specified by the authorized officer, the Forest Service shall have corrective action taken and the holder shall be responsible for all costs including legal and court costs.

7. Forest Service Inspection of Dams. The holder shall allow inspection of the dam and appurtenant structures at any time by the authorized officer. Any condition adversely affecting or which could adversely affect the operation of the facility; safety of the structure or the public, or surrounding lands and resources shall, upon written notice, be corrected or changed by the holder at the holder's expense. The authorized officer shall specify a completion date for corrective work. If corrective action is not taken by the date specified by the authorized officer, the Forest Service shall have corrective action taken and the holder shall be responsible for all costs including legal and court costs. A copy of the Forest Service inspection report shall be provided to the holder.

An inspection performed by the Forest Service does not relieve the holder of the responsibility of ensuring that inspections are made in accordance with section 6 of this clause.

8. Dam Safety Evaluations. Beginning in 2005 and at 5-year intervals thereafter, the holder shall have a formal dam safety evaluation performed by a qualified engineer to verify the safety and integrity of the dam and appurtenant structures. The evaluation will include, but is not limited to, a detailed field inspection of the dam and appurtenant structures and a review of all pertinent documents, such as investigation, design, construction, instrumentation, operation, maintenance, and inspection records. The evaluation shall be based on current accepted design criteria and practices. The holder shall provide two copies of the evaluation report to the authorized officer and Regional Engineer. Based on this report, the authorized officer may require the holder to perform additional evaluations pursuant to such standards as the officer may define and may require rehabilitation or modification of the structure within a reasonable time.

9. Right of Action To Abate Emergency Situations. In situations where the authorized officer determines on the available facts that there is danger of a dam failure for any reason, such officer may exercise discretionary authority to enter upon the structure and appurtenances authorized herein and take such actions as are necessary to abate or otherwise prevent a failure. Such actions include, but are not limited to, lowering the level of the impounded waters utilizing existing structures or by artificial breach of the dam. In the event that such actions are taken, the United States shall not indemnify or otherwise be liable to the holder for losses or damages, including losses or damages to the structure or the value of impounded waters. The holder shall be responsible for all costs including legal and court costs. The failure of the Forest Service to exercise any discretion under this provision

shall not be a violation of any duty by the United States, and shall not relieve the holder of any and all liability for damages in the event of a dam failure.

10. Liability. The activities permitted by this authorization shall be deemed a high risk use and occupancy. Sole responsibility for the safety of the dam and associated facilities and any liability resulting therefrom shall be on the holder and his successors, agents, or assigns. Pursuant to 36 CFR 251.56(d), or its replacement, the holder shall be liable for injury, loss, or damage resulting from this authorization regardless of the holder's fault or negligence. Maximum strict liability shall not exceed \$1,000,000.00 except as that amount may be changed in the aforementioned regulations.

In addition to all waivers and limitations on liability of the United States under this authorization, the provisions of 33 U.S.C. 702(c) shall apply to any damages from or by floods or flood waters at any place.

B. 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.

C. 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.

D. 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.

E. Superceded Authorization (X-18). This authorization supercedes a special-use authorization designated: City of Grand Junction, reservoir, issued November 17, 1972.

ACCEPTANCE On this 6th day of October, 2005, I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.

Holder: City of Grand Junction

By: [Signature]  
Title: City Manager

The Secretary of Agriculture by the Deputy Regional Forester, Forest Service, has executed this easement pursuant to delegations of authority specified in 7 CFR 2.60 and 36 CFR 251.52 on the day and year written above.

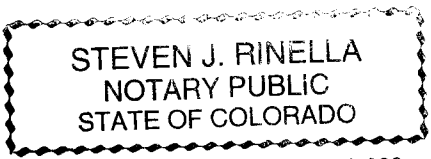
UNITED STATES OF AMERICA  
[Signature]  
FOR RICHARD C. STEM  
Deputy Regional Forester  
Rocky Mountain Region  
Forest Service, Department of Agriculture

**GRANTOR ACKNOWLEDGMENT**

STATE OF COLORADO )  
  ) ss.  
COUNTY OF JEFFERSON )

On this 5th day of May, 2005, before me, Steven J Rinella, the undersigned officer, personally appeared, RANDALL KARSTADT, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

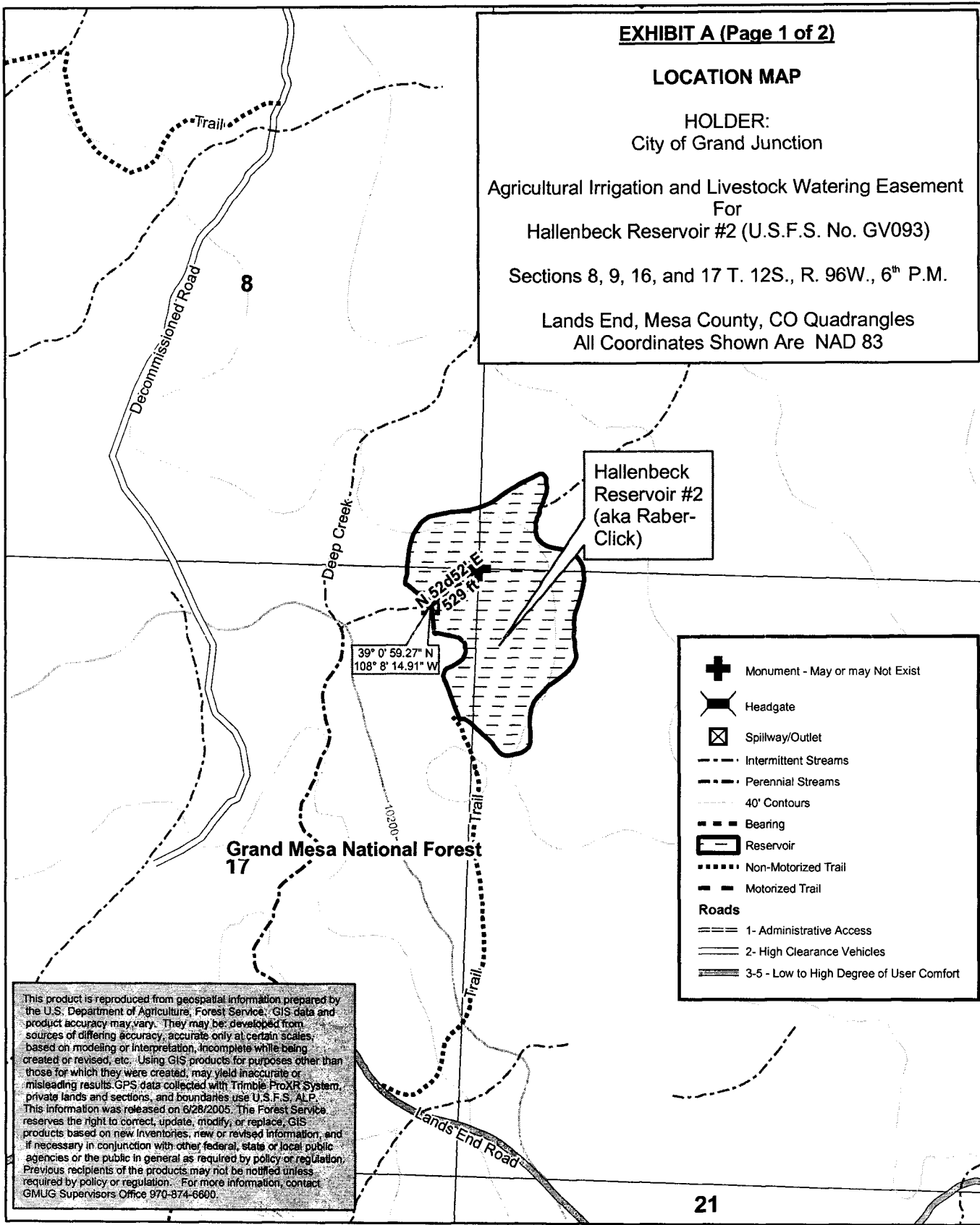
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(Seal)  [Signature]  
Notary Public

My commission expires: 4/19/2008



RECORDER NOTE: POOR QUALITY DOCUMENT  
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**EXHIBIT A (Page 1 of 2)**

**LOCATION MAP**

**HOLDER:**  
City of Grand Junction

Agricultural Irrigation and Livestock Watering Easement  
For  
Hallenbeck Reservoir #2 (U.S.F.S. No. GV093)

Sections 8, 9, 16, and 17 T. 12S., R. 96W., 6<sup>th</sup> P.M.

Lands End, Mesa County, CO Quadrangles  
All Coordinates Shown Are NAD 83

Hallenbeck  
Reservoir #2  
(aka Raber-  
Click)

- Monument - May or may Not Exist
- Headgate
- Spillway/Outlet
- Intermittent Streams
- Perennial Streams
- 40' Contours
- Bearing
- Reservoir
- Non-Motorized Trail
- Motorized Trail
- Roads**
- 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

10/31/2005

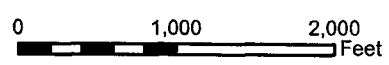


EXHIBIT A (Page 2 of 2)

Description for the Hallenbeck Reservoir No. 2, Agriculture Irrigation and Livestock Watering Easement (Forest Service No. GV093):

Located in the SE1/4 SE1/4 SE1/4, Sec. 8; SW1/4 SW1/4, Sec. 9; NW1/4 NW1/4, NW1/4 SW1/4 NW1/4, Sec. 16; E1/2 NE1/4 NE1/4, Sec. 17; T.12S, R.96W, 6 P.M., the centerline of which is more particularly described as follows:

The Hallenbeck Reservoir outlet as depicted on Exhibit A, Page 1 of 2, is located on the westerly edge of the reservoir from which the NE corner of Section 17 (monument may or may not exist) bears N 52°52' E, 529 ft., plus or minus. Refer to the official document for the reservoir 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.