

FEDERAL EASEMENTS, SPECIAL USE PERMITS AND BYPASS FLOWS:

**A Report on the Status of the Grand Mesa Reservoirs
& Diversion Facilities of the Chambers Reservoir Company,
the Deep Creek Reservoir Company, the Grand Mesa Reservoir
Company, the Kannah Creek High Line Ditch Company, and
Selected Facilities in the Whitewater Creek Basin**

Kristen L. Dillon
for the City of Grand Junction

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This purpose of this report is to clarify the various federal authorities governing the reservoirs and diversion facilities of the Chambers Reservoir Company, the Deep Creek Reservoir Company, the Grand Mesa Reservoir Company and the Kannah Creek High Line Ditch Company which are located on United States Forest Service (USFS) and Bureau of Land Management (BLM) lands adjacent to or on the Grand Mesa. The City of Grand Junction has an interest in each of these companies. In addition, this report includes information on Whitewater Creek diversion facilities which the City shares with other water users in Whitewater Creek basin. In recent years, both the USFS and BLM have become more actively involved in balancing development interests with environmental interests. In general, new requirements have been applied to new uses of the federal lands or added to existing Special Use Permits upon reissuance. However, as both agencies have become more interested in areas such as ecosystem management and habitat restoration, and as public environmental concerns have grown, questions have arisen regarding the applicability of old easements to modern uses.

This report consists of five parts: (1) a two-page status sheet, outlining the current authorization and applicable federal statutes for each of the facilities located on USFS and BLM land and a listing of items needing further attention; (2) a discussion of recent decisions on bypass flows by the Arapaho and Roosevelt National Forests (ARNF) on the Eastern Slope and the implications for Grand Mesa area facilities; (3) a summary of findings related to the status and history of the facilities; (4) a discussion of the federal statutes governing the establishment of the facilities on USFS and BLM lands; and (5) an appendix providing a partial listing of items related to the facilities which have been filed with Mesa County.

Sources for the report include U.S. Forest Service files located in the District Ranger's Office in Grand Junction and the Forest Supervisor's Office in Delta; files from the BLM Area and District Offices in Grand Junction; City of Grand Junction files; a wide variety of USFS and other information related to the proposed imposition of bypass flows on seven reservoirs within the Arapaho and Roosevelt National Forests; and discussions with a wide range of knowledgeable people, including USFS staff, BLM staff, City staff, private attorneys representing Front Range cities involved in the bypass flow dispute, and other interested parties.¹ Records filed with the Mesa County Clerk and Recorder office were consulted as needed to help fill in informational gaps.

¹ The following people provided information for this report: John Almy, USFS, GMUG Forest Supervisor's Office; Linda Cerise, USFS, GMUG Forest Supervisor's Office; Ed Ullrey, USFS, Grand Junction District Ranger's Office; Jim Jacobson, USFS, Collbran District Ranger's Office; Carlos Sauvage, BLM, Grand Junction Resource Area Office; Alan Kraus, BLM, Grand Junction District Office; Madeleine Weiss, BLM, Grand Junction District Office; Bud Bradbury, Kannah Creek; Keith Clark, Kannah Creek; Greg Trainor, City of Grand Junction; Terry Franklin, City of Grand Junction; Dan Vanover, City of Grand Junction; Ralph Sterry, City of Grand Junction; Tim Woodmansee, City of Grand Junction; Dan Wilson, City of Grand Junction; Bennett Raley, Hobbs, Trout and Raley, Attorneys-at-Law; Jennifer Russell, Hobbs, Trout and Raley, Attorneys-at-Law; and Dick MacRavey, Colorado Water Congress.

**Federal Easements, Special Use Permits and Relevant Authorities
 Pertaining to the Grand Mesa Reservoirs and Diversion Facilities of the Chambers
 Reservoir Company, the Deep Creek Reservoir Company, the Grand Mesa Reservoir
 Company, and the Kannah Creek High Line Ditch Company
 and Selected Facilities in the Whitewater Creek Basin**

| FACILITY NAME | STATUS OF R.O.W. | FEDERAL AUTHORITY |
|--|--|---|
| Company-Owned Reservoirs on USFS Land | | |
| Chambers (a/k/a Dry Creek) Chambers Reservoir Company | Perpetual easement, August 26, 1903 | Act of March 3, 1891; Act of May 11, 1898 |
| Deep Creek Deep Creek Reservoir Company | Perpetual easement, May 4, 1907 and July 3, 1915 | Act of March 3, 1891; Act of May 11, 1898 |
| Grand Mesa #1 Grand Mesa Reservoir Company | Perpetual easement, December 21, 1888 | Act of July 26, 1866; Act of July 9, 1870 |
| Scales #1 Grand Mesa Reservoir Company | Perpetual easement, September 9, 1891 | Act of July 26, 1866; Act of July 9, 1870 |
| Scales #3 Grand Mesa Reservoir Company | Perpetual easement, September 6, 1900 | Act of July 26, 1866; Act of July 9, 1870 |
| Grand Mesa #6 Grand Mesa Reservoir Company | Perpetual easement, June 20, 1903 | Act of March 3, 1981; Act of May 11, 1898 |
| Grand Mesa #8 Grand Mesa Reservoir Company | Perpetual easement, June 20, 1903; Special Use Permit for reconstruction of dam, November 11, 1985 (expired) | Act of March 3, 1891; Act of May 11, 1898 |
| Grand Mesa #9 Grand Mesa Reservoir Company | July 17, 1903 (relinquished); Special Use Permit, application filed November 7, 1968 | Act of March 3, 1891; Act of May 11, 1898 (relinquished easement); Act of June 4, 1897 |

| FACILITY NAME | STATUS OF R.O.W. | FEDERAL AUTHORITY |
|---|---------------------------------------|--|
| Company-Owned Ditches, Canals & Diversion Facilities on USFS and BLM Lands | | |
| Grand Mesa Reservoir Company Ditch (USFS) Grand Mesa Reservoir Company | Perpetual Easement, June 20, 1903 | Act of March 3, 1891; Act of May 11, 1898 |
| Kannah Creek High Line Ditch (BLM & USFS) Kannah Creek High Line Ditch Company | Perpetual Easement, May 29, 1905 | Act of March 3, 1891; Act of May 11, 1898 |
| Kannah Creek High Line Ditch - Lander's Extension (USFS) Kannah Creek High Line Ditch Company | Perpetual Easement, July 10, 1914 | Act of March 3, 1891; Act of May 11, 1898 |
| Selected Ditches, Canals & Diversion Facilities in the Whitewater Creek Basin | | |
| Brandon Ditch, Brandon Ditch Enlarged, Second Enlarged & Brandon Ditch # 3 (USFS & BLM) | Perpetual Easement, date uncertain | Act of July 26, 1866; Act of July 9, 1870 |
| Guild Ditch, Guild Ditch #1, Guild Ditch #2 (BLM) | Perpetual Easement, August 6, 1912 | Act of March 3, 1891 and May 11, 1898 |
| AREAS NEEDING FURTHER ATTENTION | | |
| <p>1) Grand Mesa Reservoir #9 - An application for a Special Use Permit for this reservoir, owned by the Grand Mesa Reservoir Company, was signed on November 7, 1968. The USFS now believes that the application was not processed and the Special Use Permit may not have been issued. Representatives of the Grand Mesa Reservoir Company have been under the impression that the Permit was issued and would expire only upon a change of ownership. This is matter which will need to be worked out between the Company and the USFS.</p> | | |

**BYPASS FLOWS ON THE ARAPAHO AND ROOSEVELT NATIONAL FORESTS:
Implications for the Grand Mesa Reservoirs and Diversion Facilities
of the Chambers Reservoir Company, the Deep Creek Reservoir Company,
the Grand Mesa Reservoir Company and the Kannah Creek High Line Ditch
Company and Selected Facilities in the Whitewater Creek Basin**

Background

In 1991, the Cities of Boulder, Fort Collins, Greeley and Loveland, the Public Service Company and the Water Supply and Storage Company were notified by staff of the Arapaho and Roosevelt National Forests (ARNF) that the Special Use Permits which provide them authority to operate reservoirs within the ARNF would be renewed subject to a bypass flow requirement for habitat and ecosystem purposes. According to staff of the ARNF, new bypass flows were required by the ARNF Forest Plan. This plan, The Land and Resource Management Plan for the Arapaho and Roosevelt National Forests and Pawnee National Grassland, was approved in 1984 with several broad environmental goals. These goals include the development of permit conditions and easement stipulations which require minimum bypass flows and the maintenance of 40% or more of the habitat for each vertebrate species found on the Forest. The relevant provisions of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), as well as other federal statutes governing the United States Forest Service (USFS), were also used to justify the proposed bypass flow conditions.

This action by the USFS began a three year battle which was partially resolved in July 1994 when M.M. Underwood, the ARNF Forest Supervisor, released final decisions on five of the seven permits in question. Special Use Permits were renewed for the City of Greeley, City of Loveland and the Water Supply and Storage Company reservoirs on the ARNF. These permits were renewed subject to the implementation of voluntary mitigation measures which were negotiated by the affected entities. According to an attorney representing one of the Cities, the mitigation measures, which consist of a "defined pattern of reservoir releases to benefit downstream fish habitat" will be timed so as to ensure that there is no loss of yield from the reservoirs. With regard to a reservoir owned by the City of Fort Collins, a bypass flow consisting of the lesser of natural inflows or three (3) cfs will be imposed between April 1 and September 30. From October 1 to March 31, a bypass flow of one (1) cfs will be imposed. Final decisions on the remaining two permits held by the City of Boulder and the Public Service Company are pending. In September 1994, the five permit renewal decisions were appealed by a coalition of state and national environmental interests which has asserted that the USFS did not adhere to its own 40% habitat standard when it renewed the permits.

Implications

Based on information gleaned from the USFS decisions in eastern Colorado, USFS, BLM, City and Reservoir Company files, and discussions with local USFS staff, water interests and others who are closely watching these actions, it appears that the Companies could find themselves waging a similar battle with the Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) to protect the yield of their water supply. However, compared to the entities involved in the ARNF bypass flow dispute, the Companies are definitely less vulnerable on several fronts. The reasons for this conclusion follow:

A. Hydrologic Conditions

The creeks downstream from each of the Companies' reservoirs are dry the majority of the time. However, as the Companies' reservoirs are located on intermittent streams, these creeks would naturally be dry except during the Spring run-off. Consequently, there has never been sustainable aquatic habitat in these streams. Since the building of the reservoirs, the creeks have actually carried water for a more extended period of time, as they are used when the Companies are releasing water from the reservoirs.

On the East Slope, the operation of each of the seven impacted reservoirs caused the complete dewatering of stretches of perennial stream directly below the reservoirs. Consequently, aquatic habitat, which existed in other parts of the streams, had been destroyed or significantly diminished. Although the 40% habitat maintenance goal which the USFS attempted to enforce on the East Slope is regionwide, and thus applicable to the GMUG National Forests, it seems likely that the USFS would have a much harder time taking issue with the dry creeks downstream from the Companies' reservoirs. USFS staff from the GMUG Forest Supervisor's Office indicated that habitat studies have not been performed and that there are no immediate plans to undertake any habitat evaluations. It is unclear how the natural intermittent state of the creeks and the ongoing historic operation of the reservoirs, some of which have existed for over 100 years, would be evaluated. USFS staff also indicated that there had been a series of serious complaints regarding the operation of the East Slope reservoirs and the dewatered streams. USFS staff then stated that there had been few, if any, complaints regarding the operation of the Companies' reservoirs.

In November 1994, Eleanor Towns, a regional USFS official from the Lakewood, Colorado Office, discussed by-pass flows at a Trout Unlimited meeting in Grand Junction. At this meeting, she stated that the USFS has plans to evaluate the permits and easements for 1600 water facilities on the National Forests within Colorado. Responding to a question, Ms. Towns stated that the imposition of by-pass flows is contingent upon an active in-flow of water to a reservoir. Potentially, this

could mean that the Companies' reservoirs would be subject to by-pass flow requirements only during the Spring run off period when the reservoirs are filling.

B. Impact of the Endangered Species Act

The affected East Slope facilities are within the Platte River basin. When endangered species consultation was undertaken between the USFS and the United States Fish and Wildlife Service (USFWS) for renewal of the permits, it was proposed that bypass flows could help alleviate damages caused to several endangered species on the Platte River in Nebraska. The Companies' reservoirs lie within the Colorado River basin and are therefore covered by the state-federal Recovery Implementation Program Recovery Action Plan (RIPRAP) for the four endangered fish species in the Upper Colorado Basin. As long as the RIPRAP is "making progress," facilities with annual depletions of less than 3000 acre feet are essentially exempt from new conditions imposed by the USFWS. This is because the RIPRAP is considered by the USFWS to be the "reasonable and prudent alternative" for species conservation for facilities with annual depletions of 3000 acre feet or less.

Only the Grand Mesa Reservoir Company operates more than one reservoir. The total capacity of the Grand Mesa Reservoir Company reservoirs on USFS land is 1595.00 acre feet, well under the 3000 acre feet threshold. As long as the RIPRAP remains in place, the Companies should be protected from an endangered species jeopardy opinion.

C. Special Use Permits v. Perpetual Easements

Each of the affected East Slope reservoirs was authorized by a Special Use Permit which was expiring or had expired. Special Use Permits are granted and renewed subject to "then existing laws and regulations governing the occupancy and use of the National Forest lands." Although it appears that Grand Mesa #9 should be under a Special Use Permit, the remaining reservoirs are authorized by perpetual easements granted to their original owners. Three reservoirs and one ditch, Grand Mesa #1, Scales #1 and Scales #3 and the Brandon Ditch were authorized under the Acts of July 26, 1866 and July 9, 1870. The remainder of the facilities with perpetual easements were authorized under the Act of March 3, 1891 which was amended by the Act of May 11, 1898. Grand Mesa #8 was issued a Special Use Permit for reconstruction and maintenance. A permit issued for reconstruction or maintenance, which did not increase the capacity of the reservoir, expired upon completion of the work. Had the permit been issued for work which resulted in enlargement of the reservoir, the enlarged portion would continue to be authorized by a renewable Special Use Permit. The original portion of the reservoir would remain under its original perpetual easement.

Finally, during a November 1994 presentation at a Trout Unlimited meeting in Grand Junction, Forest Service official Eleanor Towns stated that the USFS is currently considering exempting from by-pass flow requirements all facilities authorized prior to the creation of the National Forests. The Battlement National Forest, which became the Grand Mesa National Forest, was established on December 24, 1892. It is the third oldest National Forest in the country. Of the Companies' Grand Mesa facilities, Grand Mesa #1, Scales #1, and Scales #3 were permitted prior to the withdrawal of the National Forests. Ms. Towns indicated that in all other cases the USFS would seek to reevaluate Special Use Permits and perpetual easements. In addition, the Brandon Ditch, in the Whitewater drainage basin, was also permitted prior to the withdrawal of the National Forests.

D. Forest Management Plan Revision

The decision to seek bypass flows for seven reservoirs within the Arapaho and Roosevelt National Forests was, in part, based upon a regionwide standard and guideline which requires the maintenance of at least 40% of habitat for all vertebrate species on the Forest. More specifically, bypass flow targets were based upon fish habitat guidelines contained in the 1984 Land and Resource Management Plan for the ARNF. The Management Plan for the Grand Mesa, Uncompahgre and Gunnison National Forests was scheduled to be revised beginning in late 1994. However, this has been delayed at least one year so that revision can also incorporate the San Juan National Forest. Final completion is scheduled for 1997 - 1998.

The Companies and other water users can participate in Forest Plan revision and should actively do so. During the revision process, guidelines specific to the GMUG forests will be written and it is highly likely that these guidelines will address environmental issues such as habitat, biological diversity, and ecosystem planning. Early and continuing participation by the Companies should help ensure that potential new requirements will not have an unforeseen adverse impact on the operation of existing reservoirs and diversion facilities. In addition, it will establish a working relationship with the local USFS staff which could be important should permit conditions or easement validity be challenged. A central feature of the USFS East Slope decisions was the ARNF Forest Supervisor's willingness to accept voluntary mitigation measures which had been cooperatively developed by the impacted entity and the USFS, even though the end result of these mitigation measures could be less environmentally beneficial than the imposition of steady bypass flows. This USFS decision to cooperate, rather than command and control, is being challenged by a coalition of environmental interests and it remains to be seen whether or not pragmatic, voluntary solutions can and will be utilized by the USFS.

Conclusions

Based on the actions taken on the Arapaho and Roosevelt National Forests, the experience of the cities and companies involved in opposing bypass flows, and information which has been pieced together with regard to the Companies' facilities and selected facilities within the Whitewater basin, several areas have emerged which should be considered for further attention:

A. Customary Operation of the Grand Mesa Reservoirs

Current operation appears to have caused the USFS little or no environmental concern. However, perennially dry streambeds and the lack of winter releases seem to have been factors which triggered the USFS attempt to impose bypass flows on the East Slope. As all of the Companies' reservoirs lie above intermittent streams, it appears that habitat potential in these streams is minimal due to natural conditions. Reservoir operations have actually increased the amount of time during which water flows in the creeks.

B. RIPRAP "Reasonable and Prudent Alternative" Protection

Currently, the RIPRAP provides a measure of protection to the Companies that their reservoirs will not be subject to ESA-related bypass flows. However, the USFWS will only consider the RIPRAP the "reasonable and prudent alternative" within the Upper Colorado River Basin as long as "sufficient progress" is being made on fish recovery. Consequently, it is extremely important that the Companies support the fish recovery process as much as possible.

C. Forest Management Plan Revision

The Forest Management Plan revision process was scheduled to begin in late 1994, although recent discussions with USFS staff in the Forest Supervisor's office indicate that revision will be delayed at least one year, so that it can be combined with Management Plan revision for the San Juan National Forest. Forest Plan revision, which will focus on the National Forests as an ecological unit, is scheduled to be completed sometime between 1997 and 1998.

The Companies have a right to participate in Forest Management Plan revision and a critical interest in any changes which might occur. Attention should be paid to sections of the plan addressing travel management, habitat, and biodiversity, as well as water resources. Current federal emphases on ecosystem management and planning are not necessarily threats to the Companies, so long as the USFS provides its permit and easement holders with flexibility in meeting environmental targets.

D. Suggestions from Those Who Fought the USFS on the East Slope

Should the USFS attempt to impose bypass flows, those involved in the dispute with the ARNF suggest the following:

- Strongly assert the existence of a valid right-of-way grant. All information concerning existing federal easements and rights-of-way and any documentation regarding water rights which will help make the case for a valid perpetual easement should be compiled.
- Seek support from state government and the Congressional delegation. The state legislature appropriated a significant "war chest" to help the impacted East Slope entities fight the USFS. This action is credited with forcing the USFS to back down and adopt a more cooperative stance. In addition, the Governor's office actively supported the cities and companies involved in the dispute. The Colorado Water Conservation Board can be of help, especially with regard to issues with USFWS. Finally, the Congressional delegation can be very helpful at drawing attention to these issues and working with USFS officials.
- Prepare hydrology and habitat studies and force them on the USFS. The City of Greeley developed a joint-operations plan which showed that habitat could be restored without reducing reservoir yield by modifying operations. The Governor's office endorsed this plan and called for peer review of the Greeley proposal. In the end, Greeley's proposal was positively reviewed by the USFWS, the state Division of Wildlife, and the National Biological Survey. This forced the USFS to accept it.
- Refuse to accept potential USFS claims that the East Slope decisions are precedential. In addition, assert a right to rely on the "Madigan" letter of October 6, 1992, from then Secretary of Agriculture Edward Madigan to Senator Hank Brown. This letter states that,

New bypass flows requirements will not be imposed on existing water supply facilities...the permits will obligate the permittee to accommodate resource goals of the Forest. This accommodation will be to the extent feasible without diminishing the water yield or substantially increasing the cost of the water yield from the existing facility.

The Madigan letter has never been publicly reversed and until it is, it can be asserted that it is a positive affirmation of USFS policy.

- If forced into negotiating conditions for a Special Use Permit or mitigation agreement, continue to assert all claims to prior existing rights-of-way. Again, using the example of Greeley, the City negotiated a mitigation agreement with the USFS which will allow them to continue operating their reservoir under a Special Use Permit. General language within the agreement states that Greeley continues to reserve all rights under an existing grant of right-of-way.
- Be prepared for USFS policy changes. In general, bypass flow decisions and Forest Management Plan revision are handled by the Forest Supervisor's Office. However, larger policy goals are often set by the USFS Regional Office or Headquarters. A good relationship with the Supervisor's Office is important, but it won't safeguard against mid-stream policy changes.

E. Congressional Opportunities

Colorado Senator Hank Brown has been a strong opponent of USFS attempts to impose bypass flows on Colorado water facilities. With the recent changes in the political complexion of the Congress, rumor has it that Senator Brown is contemplating the introduction of legislation designed to prevent the USFS from seeking environmental bypass flows. Water users may want to contact Senator Brown's staff and review any draft or introduced legislation on this matter. If the legislation looks beneficial, individuals or the Reservoir and Ditch Companies may wish to offer their support and assistance. This could include writing letters in support of the legislation to the appropriate Congressional Committee chairs, members of the appropriate Committees, members of the Colorado Congressional delegation, and the Governor's office, as well as sharing the legislation with other concerned water users and urging them to contact Congress. As of this time, Roxie Burris, Senator Brown's Legislative Director and Lee Miller, the Legislative Assistant with responsibility for water issues, are the appropriate contacts. Ms. Burris and Mr. Miller can be contacted at 202/224-5941. In early 1995, Bennet Raley will rejoin Senator Brown's staff. Mr. Raley has extensive experience with the bypass flow issue. He can be reached at the same number. In addition, the local contact for Senator Brown is Craig Glogowski. He can be reached at 245-9553.

**Summary of Findings Related to the Grand Mesa Reservoirs and Diversion
Facilities of the Chambers Reservoir Company, the Deep Creek Reservoir Company,
the Grand Mesa Reservoir Company, and the Kannah Creek High Line Ditch
Company and Selected Facilities in the Whitewater Creek Basin**

Following is a summary of information gathered from United States Forest Service (USFS), Bureau of Land Management (BLM), Mesa County and City of Grand Junction files. In most cases, records regarding ownership, rehabilitation or enlargement of the reservoirs were incomplete. Consequently, information had to be pieced together from each of these sources. The following summaries are an attempt to compile in one place, and in a brief, usable format, pertinent information regarding each reservoir and diversion facility owned by the various Companies and located on federal Forest Service or Bureau of Land Management lands. It should be noted that the purpose of this report was to research and evaluate the easements and Special Use Permits authorizing the existence and operation of selected water facilities on public lands. Water rights information taken from a variety of sources is included for informational purposes, but is not intended to be definitive.

COMPANY-OWNED RESERVOIRS ON U.S. FOREST SERVICE LAND

The Chambers Reservoir Company

The Chambers Reservoir Company owns and operates the Chambers Reservoir. The City of Grand Junction has a 33.3% interest in the Company. The total capacity of Chambers Reservoir is 236.40 acre feet, of which the City's share is 78.72 acre feet.

Chambers (a/k/a Dry Creek)

| | |
|-------------------------------------|---|
| Status of Right-of-Way: | Perpetual easement, August 26, 1903 |
| Application for Right-of-Way Filed: | October 31, 1902 |
| Federal Authority: | Act of March 3, 1891; Act of May 11, 1898 |
| File Number: | Montrose 016444 |
| Water Rights Appropriation Date: | June 15, 1903 |
| Decree Date: | June 1, 1916 |
| Decree Amount: | 600.00 acre feet |
| Current Capacity: | 236.40 +/- acre feet |

Percent City-Owned: 33.3
City-Owned Capacity: 78.72 acre feet

The easement for Chambers Reservoir was originally issued to W.W. Morrison, W.A. Sullivan and Charles A. White. Although the reservoir is now owned by the Chambers Reservoir Company, it is unclear whether or not Morrison, et al received the easement on behalf of the Company or if the Company was formed following the development of the reservoir. The City of Grand Junction in 1973 acquired an undivided one-third interest in Chambers Reservoir; an undivided one-third interest in and to the right to divert, impound and store 600 acre feet of water in Chambers Reservoir under reservoir priority #1; and an undivided one-third interest in the Chambers Reservoir Supply Ditch from the Kannah Creek Land and Cattle Company.

The Deep Creek Reservoir Company

The Deep Creek Reservoir Company owns and operates the Deep Creek Reservoir. The City of Grand Junction has a 19.4% interest in the Company. The total capacity of Deep Creek Reservoir is 354.00 acre feet, of which the City's share is 68.68 acre feet.

Deep Creek (a/k/a Deep Creek #2)

Status of Right-of-Way: Perpetual easement, May 4, 1907 and July 3, 1915

Application for Right-of-Way Filed: August 13, 1906 and July 5, 1913

Federal Authority: Act of March 3, 1891; Act of May 11, 1898

File Number: Glenwood Springs 026758 (Montrose 07812)

Water Rights Appropriation Date: September 15, 1906

Decree Date: June 1, 1916

Decree Amount: 525.64 acre feet (original conditional)²
350.00 acre feet (absolute)

² 350.00 acre feet of the total 525.64 acre feet appropriated was made absolute on July 25, 1941. The remaining 175.00 acre feet has never been made absolute.

| | |
|----------------------|----------------------|
| Current Capacity: | 354.00 +/- acre feet |
| Percent City-Owned: | 19.4 |
| City-Owned Capacity: | 68.68 acre feet |

On August 13, 1906, an easement for irrigation purposes was granted to William Van Pelt for two reservoirs within the Deep Creek drainage. Van Pelt subsequently sold the reservoirs to the Deep Creek Reservoir Company on May 7, 1909. On July 5, 1913, the Deep Creek Company applied for an easement for these same two reservoirs. It is unclear why the Company essentially reapplied for an easement which should have been transferred to them when they purchased the reservoirs from Van Pelt. However, the easement to the Deep Creek Reservoir Company was approved on July 3, 1915. In 1920, a report from the USFS to the General Land Office indicated that Reservoir #1 had been in operation for three years, but that Reservoir #2 remained incomplete.

According to USFS records, Deep Creek #1 was relinquished sometime around 1926. Deep Creek #1 was next known as Hallenbeck #2 and then Raber-Click Reservoir. It is currently owned by the City of Grand Junction. In 1970, the Company apparently performed maintenance work on the Reservoir #2 dam. Plans for the maintenance work were filed with the State Division of Water Resources, but not the USFS, in violation of USFS regulations. The City of Grand Junction owns 19.4% of Deep Creek Reservoir.

The Grand Mesa Reservoir Company Reservoirs

The Grand Mesa Reservoir Company owns and operates six reservoirs and a ditch within the Grand Mesa National Forest. The City of Grand Junction has a 22.6% interest in the Company.

The Company estimates that the combined capacity of the Grand Mesa #1, Grand Mesa #6, Grand Mesa #8, Grand Mesa #9, Scales #1, and Scales #3 Reservoirs is 1595.00 acre feet. The City of Grand Junction estimates that the actual yield of this group of reservoirs is 1150.00 acre feet. Thus, its share of the estimated combined capacity of the Company's reservoirs is 360.47 acre feet. The City's share of the combined estimated yield is 259.90 acre feet.

Grand Mesa #1

| | |
|-------------------------|---|
| Status of Right-of-Way: | Perpetual easement, December 21, 1888 (filed in Mesa County, Colorado, book 23, page 360) |
|-------------------------|---|

| | |
|-------------------------------------|-----|
| Application for Right-of-Way Filed: | n/a |
|-------------------------------------|-----|

| | |
|---------------------------------|---|
| Federal Authority: | Act of July 26, 1866; Act of July 9, 1870 |
| File Number: | 7/8/70 |
| Water Right Appropriation Date: | August 1, 1887 |
| Decree Date: | June 1, 1916 |
| Decree Amount: | 780 acre feet |
| Current Capacity: | 559.00 +/- acre feet |
| Percent City-Owned: | 22.6 |
| City-Owned Capacity: | 126.33 acre feet |

On December 21, 1888, the Grand Mesa Reservoir Company filed information regarding Grand Mesa Reservoirs #1-5 with Mesa County. According to USFS records, the surveys for these reservoirs were approved on March 11, 1885, prior to the creation of the National Forest. Under the Acts of July 26, 1866 and July 9, 1870, easements for the use of lands which had not been withdrawn into the public domain were unrecorded and established through construction and beneficial use. The only record of easements under these Acts are filing with the local office of record. No stipulations were required or executed.

Grand Mesa Reservoir #1 was the only reservoir of this original filing to be constructed. As the easements for Reservoirs #2-5 would have been established through customary use, it would appear that any claim to these sites has expired. The early files for this reservoir carry an identification date of July 8, 1870. However, USFS research into the Grand Mesa Reservoir Company easements in 1968 failed to turn up any explanation for this date.

Scales #1

| | |
|-------------------------------------|---|
| Status of Right-of-Way: | Perpetual easement, September 9, 1891 (filed in Mesa County, Colorado, book 27, page 474) |
| Application for Right-of-Way Filed: | n/a |
| Federal Authority: | Act of July 26, 1866; Act of July 9, 1870 |
| File Number: | 7/8/70 |
| Water Right Appropriation Date: | December 31, 1891 |

| | |
|----------------------|----------------------|
| Decree Date: | June 1, 1916 |
| Decree Amount: | 215 acre feet |
| Current Capacity: | 203.00 +/- acre feet |
| Percent City-Owned: | 22.6 |
| City-Owned Capacity: | 45.88 acre feet |

Like Grand Mesa Reservoir #1, the original survey for Scales Reservoir #1 was approved on March 11, 1885. However, the right-of-way for the reservoir was not filed with Mesa County until September 1891, after the passage of the Act of March 3, 1891. Although a right to the reservoir was established in 1885, Forest Service records include some speculation that the reservoir may fall under the 1891 Act. However, the bulk of the documents from the USFS file indicate that the easement falls under the earlier Acts. In addition, there is no evidence of an application for an easement or stipulations, both of which were required under the Act of 1891.

Scales #3

| | |
|-------------------------------------|---|
| Status of Right-of-Way: | Perpetual easement, September 6, 1900 (Statement filed in Mesa County, Colorado, under filing number 32554) |
| Application for Right-of-Way Filed: | n/a |
| Federal Authority: | Act of July 26, 1866; Act of July 9, 1870 |
| File Number: | 7/8/70 |
| Water Right Appropriation Date: | December 31, 1892 |
| Decree Date: | June 1, 1916 |
| Decree Amount: | 145 acre feet |
| Current Capacity: | 129.00 +/- acre feet |
| Percent City-Owned: | 22.6 |
| City-Owned Capacity: | 29.15 acre feet |

Scales #3 is the third existing Grand Mesa Reservoir Company reservoir for which surveys were approved on March 11, 1885. Although it was not filed with the County

until September 6, 1900, the USFS has consistently treated it as an easement established under the Acts of July 26, 1866 and July 9, 1870. According to USFS research done in 1969, "if construction was completed or even begun prior to 1891, we must probably assume that an easement is in effect." However, the 1900 filing with Mesa County indicates that work commenced on September 1, 1900. The Grand Mesa Reservoir Company acquired the Scales Reservoirs in 1903. Both reservoirs were completed at that time. The Grand Mesa Reservoir Company has records for the Scales Reservoir Company going back to 1897. These records contain a notation, made in 1897, that states that the Company's previous records were missing. There is no indication in the existing records as to when construction on Scales #3 commenced.

Plans for reconstruction and enlargement of Scales #3 were filed with the USFS in 1960, but did not receive USFS approval. However, it appears that the Company replaced an outlet pipe at this time without either USFS or State approval. In 1968, the Company sought USFS approval for the reconstruction of the Scales #3 dam. At this time, the USFS prepared stipulations and documentation to place the reservoir under the Acts of March 3, 1891 and May 11, 1898. The stipulations were to cover not only Scales #3, but also Scales #1 and Grand Mesa #1. It does not appear that these were ever signed.

Grand Mesa #6

| | |
|-------------------------------------|---|
| Status of Right-of-Way: | Perpetual easement, June 20, 1903 |
| Application for Right-of-Way Filed: | August 1, 1902 |
| Federal Authority: | Act of March 3, 1891; Act of May 11, 1898 |
| File Number: | Denver 035906 (Montrose 05076; Glenwood Springs 026670) |
| Water Right Appropriation Date: | December 31, 1904 |
| Decree Date: | June 1, 1916 |
| Decree Amount: | 212.60 acre feet |
| Current Capacity: | 172.00 +/- acre feet |
| Percent City-Owned: | 22.6 |
| City-Owned Capacity: | 38.87 acre feet |

The easement for Grand Mesa #6 was obtained on June 20, 1908, at the same time as the easement for Grand Mesa #8. A Forest Service report on March 30, 1911 stated that "Reservoir #6 has very little work done." In 1923, the USFS began forfeiture proceedings, but were shown by the Company that work on the reservoir was progressing. The Company was accordingly allowed more time to complete the reservoir.

In 1965, the USFS sought stipulations for the easement covering Grand Mesa Reservoirs #6 and #8, as no previous stipulations could be found. Apparently, this was discovered when the Company undertook maintenance work on Reservoir #6. It does not appear that these stipulations were ever signed.

Grand Mesa #8

| | |
|-------------------------------------|--|
| Status of Right-of-Way: | Perpetual easement, June 20, 1903; Special Use Permit for reconstruction of dam, November 11, 1985 (expired) |
| Application for Right-of-Way Filed: | August 1, 1902 |
| Federal Authority: | Act of March 3, 1891; Act of May 11, 1898 |
| File Number: | Denver 03590 (Montrose 05076; Glenwood Springs 026670) |
| Water Right Appropriation Date: | December 31, 1901 |
| Decree Date: | June 1, 1916 |
| Decree Amount: | 382.00 acre feet |
| Current Capacity: | 379.00 +/- acre feet |
| Percent City-Owned: | 22.6 |
| City-Owned Capacity: | 85.65 acre feet |

The Grand Mesa Reservoir Company received an easement for Grand Mesa Reservoir #8 on June 20, 1903. A Forest Service inspection dated March 30, 1911 stated that Reservoir #8 was complete. On July 23, 1983, the Grand Mesa Reservoir #8 dam failed. A Special Use Permit for reconstruction of the dam was issued on November 11, 1985. The permit expired upon completion of the dam reconstruction.

Grand Mesa #9

Status of Right-of-Way: July 17, 1903 (relinquished); Special Use Permit, November 7, 1968 (expires upon change of ownership)

Application for Right-of-Way Filed: August 27, 1902

Federal Authority: Act of March 3, 1891; Act of May 11, 1898 (both for relinquished easement); Act of June 4, 1897

File Number: Denver 035906 (Montrose 05080; Glenwood Springs 026670)

Water Right Appropriation Date: December 31, 1904

Decree Date: June 1, 1916

Decree Amount: 332.00 acre feet

Current Capacity: 153.00 +/- acre feet

Percent City-Owned: 22.6

City-Owned Capacity: 34.58 acre feet

The original easement for Grand Mesa Reservoir #9 was granted to William Ternahan, L.N. Farmer, and W.L. Farmer on July 17, 1903. On June 27, 1910, this easement was relinquished. Prior to the filing of the relinquishment, the Grand Mesa Reservoir Company filed an application on May 12, 1908 for Reservoir #9. On June 27, 1908, the Company was notified that it must provide proof that it had a right to the Ternahan, et al site. This was never provided. In 1920, the Company was directed to file a new application and map for an easement for Reservoir #9. This was never done.

The USFS determined in 1968 that the original easement for Reservoir #9 had been relinquished and that the reservoir had been operating in trespass for 60 years. At this point, the Company was offered an USFS Special Use Permit for the reservoir. An internal USFS memo states that the Company could have applied for an easement, but the application would have to go to BLM and the stipulations would be identical. When the Company inquired as to the difference between a Special Use Permit and an easement, they were told that "the same stipulations would apply in either case; that an easement would merely involve another agency." At that point, the Company chose to apply for a Special Use Permit and an application for

Grand Mesa Reservoir #9 was signed on November 7, 1968. Officers of the Grand Mesa Reservoir Company have been under the impression that a Special Use Permit was issued, which would only expire upon a change of ownership. Recently, the USFS discovered that they have no documentation of an issued Special Use Permit.

COMPANY-OWNED DITCHES, CANALS & DIVERSION FACILITIES ON U.S. FOREST SERVICE AND B.L.M. LANDS

The Grand Mesa Reservoir Company

The Grand Mesa Reservoir Company owns and operates six reservoirs and a ditch within the Grand Mesa National Forest. The City of Grand Junction has a 22.6% interest in the Company.

Grand Mesa Reservoir Company Ditch

| | |
|-------------------------------------|---|
| Status of Right-of-Way: | Perpetual Easement, June 20, 1903 |
| Application for Right-of-Way Filed: | August 1, 1902 |
| Federal Authority: | Act of March 3, 1891; Act of May 11, 1898 |
| File Number: | Denver 035906 (Montrose 05076; Glenwood Springs 026670) |
| Water Right Appropriation Date: | n/a |
| Decree Date: | n/a |
| Decree Amount: | n/a |

This ditch, which connects Grand Mesa Reservoir #6 with Grand Mesa Reservoir #8, was filed for and received an easement as part of the same application as Reservoirs #6 and #8. The ditch lies completely on USFS lands. According to USFS records, the ditch was constructed between 1904 and 1908.

The Kannah Creek High Line Ditch Company

The Kannah Creek High Line Ditch Company owns and operates the Kannah Creek High Line Ditch and the Lander's Extension. The City of Grand Junction has a 36.8% interest in the Company.

Kannah Creek High Line Ditch

Status of Right-of-Way: Perpetual Easement, May 29, 1905 (issued for the Juniata Reservoir Supply Ditch)

Application for Right-of-Way Filed: May 6, 1905

Federal Authority: Act of March 3, 1891; Act of May 11, 1898

File Number: Montrose 016237

Water Right Appropriation Date: March 8, 1908 (Priority 290)
November 1, 1939 (Priority 610)

Decree Date: June 1, 1916 (Priority 290)
July 25, 1941 (Priority 610)

Decree Amount: 49.11 cfs (Priority 290)
18.79 cfs (Priority 610)

City's Interest in Decree: 18.07 cfs (Priority 290)
6.91 cfs (Priority 610)

On May 29, 1905 John Ternahan received a perpetual easement for the Juniata Reservoir Supply Ditch. On November 17, 1909, the Colorado State Engineer approved the construction of the Kannah Creek High Line Ditch which was apparently an enlargement of the Juniata Reservoir Supply Ditch. A subsequent enlargement of the Kannah Creek Highline Ditch was approved by the State Engineer on January 11, 1921. The headgate for the ditch is on BLM property. The ditch crosses private and BLM land.

In 1950, the USFS determined that a Special Use Permit was needed for the Kannah Creek High Line Ditch as it appeared to be operating without authorization. A Special Use Permit was prepared with the date of April 12, 1950, but it does not appear to have been signed. A letter from the BLM to the attorney for the Kannah Creek High Line Ditch Company on February 23, 1951 and an internal USFS memo dated March 8, 1951 affirm that the Juniata Reservoir Supply Ditch and the Kannah Creek High Line Ditch are, in fact, the same facility. Consequently, the original easement remained intact. The City acquired its interest in the Kannah Creek High Line Ditch Company as part of the 1954 and 1971 Hallenbeck acquisitions, the 1964 Click acquisition, and the 1967 Raber acquisition. The City controls 36.8% of the Kannah Creek High Line Ditch.

April 15, 1940 (Second Enlargement,
Priority 991)
June 6, 1985 (Second Enlargement)

Decree Date:

February 7, 1890 (Priority 3, Transfer
from Ewers Ditch)
February 7, 1890 (Priority 3, Transfer
from Pioneer of Whitewater)
February 7, 1890 (Number 3, Priority 2)
July 21, 1959 (Enlarged)
July 21, 1959 (Second Enlargement,
Priority 991)
December 31, 1985 (Second Enlargement)

Decree Amount:

.53 cfs (Priority 3, Transfer from Ewers
Ditch)
3.55 cfs (Priority 3, Transfer from Pioneer
of Whitewater)
1.60 cfs (Number 3, Priority 2)
3.8 cfs (Enlarged)
24.8 cfs (Second Enlargement, Priority
991)
15.0 cfs (Second Enlargement)

The headgate for the Brandon Ditch is on USFS land and the ditch crosses USFS, BLM and City property. However, the ditch does not show up on BLM plats for the area nor is there any information in USFS files on the Brandon Ditch, or other ditches associated with the Brandon Ditch such as the Pioneer of Whitewater Ditch, the Ewers Ditch or the Fleak Ditch. Handwritten documents in the City's Water Rights Decrees books indicate that the original water right for the Brandon Ditch was decreed on February 7, 1890, that the Brandon Ditch was owned by George A. Bird and Edward Fleak, and that the construction date for the Brandon Ditch is July 1883. According to these documents, the construction date for the Pioneer of Whitewater Ditch is August 1882 and the construction date for the Ewers Ditch is June 1883.

County records show that Edward Fleak filed a ditch plat on January 12, 1893. It is unclear whether the Fleak Ditch and the Brandon Ditch are associated. Ditch plats were filed for the Pioneer of Whitewater Ditch on August 8, 1884 and July 21, 1892. Based upon this information, it appears that the Brandon Ditch pre-dates the Act of March 3, 1891 and therefore holds a perpetual easement under the Acts of July 26, 1866 and July 9, 1870. These Acts authorized rights-of-way for ditches, canals, and reservoirs for mining, agricultural, manufacturing or other purposes as permitted by local law and custom to any person holding vested water rights. Under state law, the

location of the projects were to be filed with the local office of record (usually the County). The federal government was not necessarily notified and the perpetual easement was acquired through construction and ongoing beneficial use.

Guild Ditch, Guild Ditch #1 and Guild Ditch #2

| | |
|-------------------------------------|--|
| Status of Right-of-Way: | Perpetual Easement, August 6, 1912 |
| Application for Right-of-Way Filed: | August 22, 1910 |
| Federal Authority: | Act of March 3, 1891; Act of May 11, 1898 |
| File Number: | Montrose 5724 |
| Water Right Appropriation Date: | May 14, 1909 |
| Decree Date: | June 1, 1916 |
| Decree Amount: | 1.08 cfs (absolute from Sink Creek) 6.84 cfs (conditional from Sink Creek) 1.08 cfs (absolute from Spring Creek) 6.84 cfs (conditional from Spring Creek) |

On August 6, 1912, the General Land Office issued a perpetual easement to A.D. Guild for Guild Ditch #1, Guild Ditch #2 and Guild Reservoir. According to a plat in BLM files, the headgate for Guild Ditch #1 is on Sink Creek, while the headgate for Guild Ditch #2 is on the Orchard Mesa Ditch, which carries water from Whitewater Creek. Both Guild ditches feed the Guild Reservoir. According to the City's Decree book, Guild Ditch, Guild Ditch #1, Guild Ditch #2 and Guild Reservoir were considered as a system. The decree states that the Guild Ditch carried water from Spring Creek directly to the Guild property. The decree further states that Spring Creek was fed by numerous springs in the area. It is unclear where Spring Creek is as it does not show up on either City or USGS maps.

In 1992, during abandonment proceedings, Judge Brown of Water Division 4 found that the Guild Ditch fed Guild Reservoir. It is unclear why this discrepancy between his findings and the original decree exists. However, a 1981 evaluation by Wright Water Engineers stated that Guild Ditch #2 had come to be known as the Guild Ditch and that the State Engineer's priority numbers indicate that Guild Ditch #2 and Guild Ditch are the same structure. In the decree of June 1, 1916, the Guild Ditch was awarded the first priority out of Spring Creek at 7.92 cfs. Guild Ditch #1 was awarded the first priority out of Sink Creek, at 7.92 cfs, and Guild Ditch #2 was

awarded the eighth priority out of Whitewater Creek, at 7.92 cfs. Construction of the system commenced on May 14, 1909.

In 1981, Wright Water Engineers and the Denver law firm of Sherman and Howard evaluated the Somerville Ranch water rights, including those decreed to the Guild facilities. Their evaluation found that the Guild Ditch #1 had an absolute right of 1.08 cfs and a conditional right of 6.84 cfs out of Sink Creek with a decree date of June 1, 1916. They found that Guild Ditch #2 had an absolute right of 1.08 cfs and a conditional right of 6.84 cfs out of either Whitewater Creek or Spring Creek. As stated above, their findings led them to believe that Guild Ditch #2 and Guild Ditch are the same facility. It remains unclear whether or not Guild Ditch and Guild Ditch #2 were originally the same structure.

In 1990, the City of Grand Junction purchased the Somerville Ranch and its water rights. That same year, the Water Division 4 Engineer placed the Guild Ditch, Guild Ditch #1, Guild Ditch #2, Guild Reservoir and ADA Reservoir on the abandonment list. The City contested this and in 1992, the Division 4 Water Court dismissed abandonment proceedings against Guild Ditch, Guild Ditch #1 and Guild Reservoir, having determined that these facilities are properly located within Water Division 5. Abandonment proceedings were concluded with respect to Guild Ditch #2 and ADA Reservoir. Consequently, the City's rights have been reduced to those listed above arising from Sink Creek and Spring Creek. However, Guild Ditch #2 has two rights: one, a direct flow right and one, a fill right for the Guild Reservoir. The abandoned right out of Whitewater Creek was the direct flow right for Guild Ditch #2, not the fill right for Guild Reservoir. Therefore, the City maintains its ability to fill Guild Reservoir from Sink Creek, Spring Creek and Whitewater Creek.

As part of a 1992 response from the City to the Division 4 Engineer regarding the abandonment proceedings, it was stated that Guild Ditch #2 had been renamed Long Mesa Ditch. Long Mesa Ditch is privately owned, although the City apparently utilizes water from it for occasional stockwatering purposes. If Guild Ditch and Guild Ditch #2 are the same structure, both are likely known as Long Mesa Ditch, leaving Guild Ditch #1 as the sole Guild Ditch. Finally, an alternate point of diversion for Guild Ditch #1 is on Whitewater Creek and is currently being utilized by the City.

Summary of Applicable Federal Statutes Granting Rights-of-Way for Reservoirs and Diversion Facilities on Public Lands

The Companies' reservoirs on United States Forest Service and Bureau of Land Management lands were authorized under three different Acts or group of Acts. A brief description of each of the applicable Acts, as well as a listing of the reservoirs authorized under each Act or Acts, is provided below.

**R.S. (Revised Statute) 2339 (Act of July 26, 1866) and R.S. 2340 (Act of July 9, 1870)
43 U.S.C. 661**

Reservoirs: Grand Mesa #1; Scales #1; Scales #3

Diversion Facilities:

**Brandon Ditch, Brandon Ditch Enlarged, Second Enlargement &
Brandon Ditch # 3**

These Acts authorized rights-of-way for ditches, canals, and reservoirs for mining, agricultural, manufacturing or other purposes as permitted by local law and custom to any person holding vested water rights. Surveys for the proposed water projects were approved by the Department of the Interior and the right-of-way was established through construction and ongoing beneficial use. According to state law, the locations of the projects were to be filed with the local office of record (usually the County). No stipulations were required or executed.

Act of March 3, 1891 43 U.S.C. and Act of May 11, 1898 43 U.S.C. 950

Reservoirs: Grand Mesa #6; Grand Mesa #8

Diversion Facilities:

**Grand Mesa Reservoir Company Ditch; Guild Ditch,
Guild Ditch #1, Guild Ditch #2; Kannah Creek
Highline Ditch; Kannah Creek Highline Ditch - Lander's
Extension**

The Act of March 3, 1891 was amended by the Act of May 11, 1898. All of the Companies' Grand Mesa reservoirs were authorized after the passage of the 1898 amendments. Thus, these two Acts are considered together for purposes of this report. The Act of March 3, 1891 granted perpetual easements to irrigation districts and canal ditch companies to construct reservoirs, canals, and laterals for irrigation and drainage purposes. Prospective grantees were required to file an application with the Department of the Interior's General Land Office. Once the application was approved, grantees had five years to construct the project. Additional time could be granted if due diligence could be shown. Upon acceptance of proof of construction by the Department of the Interior, the easement would be granted.

However, the effective date is considered to be the date upon which the application was approved and some government records are filed according to the date of application.

On May 11, 1898, the 1891 Act was amended to allow additional uses "for purposes of a public nature." As stated previously in this report, this has been interpreted, both by the 55th Congress which enacted the law and the Interior Department which had authority for administering the law, as allowing the use of water for domestic and public uses, including municipal use. Irrigation districts and canal companies remained grantees under the Acts and the filing and approval requirements were not changed by the 1898 amendments.

Act of June 4, 1897, 16 U.S.C. 473 et seq.

Reservoirs: Grand Mesa #9

The Act of June 4, 1897 is the Organic Administration Act for the National Forests. The use of waters is addressed in 16 U.S.C. 481. This section states that "all waters on such reservations (national forests) may be used for domestic, mining, milling, or irrigation purposes, under the laws of the States wherein such forest reservations (national forests) are situated, or under the laws of the United States and the rules and regulations established thereunder."

Special Use Permits under this Act were available free of charge and are valid until a change of ownership. In 1946, the Department of the Interior's General Land Office was abolished and replaced by the Bureau of Land Management. As the stipulations for Special Use Permits authorizing reservoirs were identical to those associated with easement rights-of-way under the Acts of 1891 and 1898, applicants had a choice of applying solely with the USFS for a Special Use Permit or with the USFS and BLM for an easement. Previously, applicants for easements had to apply with the General Land Office only.

1976 Federal Land Policy and Management Act (FLPMA) 43 U.S.C. 1761 et seq.

Reservoirs: Grand Mesa #9 ??

Depending upon how the confusion over the authorization for Grand Mesa #9 is worked out, any new permit would be issued under the Federal Land Policy and Management Act. FLPMA transferred authority from the Department of the Interior to the Department of Agriculture for the grant, issuance or renewal of new rights-of-way on USFS lands. These rights-of-way are issued by Special Use Permit and require payment of an annual fee for the use of federal lands. Special Use Permits are generally issued for twenty years, although this can vary based on permit

conditions and at the discretion of the local USFS office. Special Use Permits can be reissued in accordance with the laws and regulations in place at the time of reissuance. FLPMA does not effect the validity of any pre-existing grants of right-of-way.

In 1986, the Congress enacted the "Ditch Bill" [43 U.S.C. 1761 (c)(2)(A)] which transferred the authority for existing rights-of-way on USFS lands from BLM to USFS. In addition, it provided a "grace period" of ten years during which time owners of water systems located on USFS lands who cannot substantiate a valid pre-FLPMA right-of-way can apply for and receive a perpetual Ditch Bill easement at no cost. However, these benefits are strictly limited to facilities serving irrigation and stockwatering purposes. With regard to facilities which serve both agricultural and non-agricultural uses, a Ditch Bill easement can be obtained for the portion of the facility serving agricultural purposes, and a FLPMA Special Use Permit would be issued for the portion of the reservoir serving non-agricultural purposes, based on a percentage of the total facility. If an existing pre-FLPMA right-of-way can be documented, there is no need to apply for a Ditch Bill easement.

APPENDIX

Selected Mesa County Filings Related to the Grand Mesa Reservoirs and Diversion Facilities of the Chambers Reservoir Company, the Deep Creek Reservoir Company, the Grand Mesa Reservoir Company, and the Kannah Creek High Line Ditch Company and Selected Facilities in the Whitewater Creek Basin

Brandon Ditch

Ditch Plat Book #1, Number 11 - Pioneer of Whitewater Ditch

Plat of Ditch filed August 8, 1884

Statement filed in Book 10, Page 332

Ditch Plat Book #3, Number 4 - Pioneer of Whitewater and Enlargement of Pioneer
of Whitewater #2

Plat of Ditch filed July 21, 1892

Statement filed in Book 40, Page 29

Ditch Plat Book #3, Number 11 - Fleak Ditch

Plat of Ditch filed January 12, 1893

Statement filed in Book 40, Page 103

Deep Creek Reservoir

File No. 82889 April 29, 1909

Certificate of Incorporation for the Deep Creek Reservoir Company filed
February 27, 1909

File No. 83305 May 18, 1909

Plat of Van Pelt Reservoirs #1, #2 filed April 21, 1909

File No. 113652 May 6, 1913

Plat of Reservoirs #1, #2 filed April 17, 1913

File No. 145695 July 11, 1918

Decree for Reservoirs #1, #2 filed in Book 210, Page 179 May 31, 1918

Grand Mesa Reservoir Company Reservoirs and Ditch

December 21, 1888

Statement of Grand Mesa Reservoir Company, Filing for Reservoirs #1-5
filed in Book 23, Page 360

Ditch Plat Book #3, Number 6 - Grand Mesa Reservoir Company Ditch
Plat filed on September 2, 1892
Statement filed in Book 40, Page 56

November 28, 1891

Scales Reservoir Company Quit Claim Deed filed in Book 2, Page 348

File No. 25137 March 1, 1897

Scales Reservoir Company Certificate of Incorporation filed March 1, 1897

File No. 32554 September 6, 1900

Statement for Scales Reservoir #3 filed September 6, 1900

File No. 32785 October 24, 1900

Statement and plat for Farmer and Ternahan Reservoir filed (Grand Mesa #9)

File No. 80017 December 18, 1908

Plat for Ternahan Reservoir filed November 25, 1908

File No. 85153 August 21, 1909

Renewal of Corporate Life filed July 17, 1909

Guild Ditch, Guild Ditch #1, Guild Ditch #2

File No. 86687 November 10, 1909

Plat for Guild Reservoir and Guild Ditches #1 and #2 filed July 19, 1909

Kannah Creek High Line Ditch Company

File No. 75448 May 7, 1908

Certificate of Incorporation filed March 21, 1908

Ditch Plat Book #4, Number 16

Ditch Plat filed on August 30, 1904