

**FEDERAL EASEMENTS, SPECIAL USE PERMITS
AND BYPASS FLOWS:**

**A Report on the Status of the City of Grand Junction's
Grand Mesa Reservoirs and Diversion Facilities**

Kristen L. Dillon
for the City of Grand Junction

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The purpose of this report is to clarify the various federal authorities governing the City of Grand Junction's reservoirs, canals, ditches and other diversion facilities located on United States Forest Service (USFS) and Bureau of Land Management (BLM) lands adjacent to or on the Grand Mesa. The Kannah Creek, North Fork of Kannah Creek, Whitewater Creek and Sink Creek drainage basins are covered. In recent years, both the USFS and BLM have become more actively involved in balancing development interests with environmental interests. In general, environmental requirements have been applied to new uses on 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.

The City of Grand Junction owns eleven reservoirs and a partial interest in an additional eight reservoirs which are located on federal lands. The presence of these facilities on federal lands is authorized either by perpetual easements, which granted the permittee a transferable right-of-way, or by time-limited Special Use Permits which either expire upon a change of ownership (if issued prior to 1976) or must be renewed after a set term of between ten and twenty years (if issued after 1976). Special Use Permit authorizations tend to be more recent than easement authorizations. One reservoir, Grand Mesa #9, is authorized by a pre-1976 Special Use Permit.¹ The portions of Somerville Reservoir and Juniata Reservoir which lie on federal land are covered by post-1976 Special Use Permits. A Special Use Permit for Raber-Click Reservoir expired in 1982 and has not been reissued. The high water line for Purdy Mesa Reservoir is completely on City property. However, a fence surrounding this low-lying reservoir is on BLM land and the BLM has no record of the reservoir. Finally, the remaining fourteen reservoirs are authorized by perpetual easements granted under a variety of old, but valid, federal Acts. Of these fourteen reservoirs, thirteen were originally authorized for agricultural purposes. The transferability of easements issued for agricultural purposes to municipal uses is discussed in a subsequent section of this report. In addition, the City also owns twelve ditches and pipelines and a partial interest in four additional ditches, which are also discussed in this report.

This report consists of six parts: (1) a seven-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 the City's facilities; (3) a summary of findings related to the status and history of the City's facilities; (4) a

¹ In 1968, the Grand Mesa Reservoir Company applied for a Special Use Permit for Grand Mesa #9. The USFS recommended approval of the permit. In November 1994, the USFS discovered that they have no record of the Special Use Permit being issued. Thus, it is currently unclear whether or not a Special Use Permit for Grand Mesa #9 exists. Until the USFS questioned the permit, the Company was under the impression that the authorization for the reservoir was completely in order.

discussion of the federal statutes governing the establishment of the City's facilities on USFS and BLM lands; (5) an appendix providing a partial listing of items related to the facilities which have been filed with Mesa County; and (6) a file for each facility containing relevant information copied from USFS and BLM files.

Sources for the report include United States 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.² Records filed with the Mesa County Clerk and Recorder office were consulted as needed to help fill in informational gaps.

² The following people provided information for this report: John Almy, USFS, GMUG Forest Supervisor's Office; Linda Cerise, USFS, GMUG Forest Supervisor's Office; Jeff Ulrich, 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 City of Grand Junction's
Grand Mesa Reservoirs and Diversion Facilities**

FACILITY NAME	STATUS OF R.O.W.	FEDERAL AUTHORITY
City-Owned Reservoirs on USFS Land		
Anderson #1	Perpetual easement, July 1, 1910; City executed updated stipulations on July 17, 1963	Act of March 3, 1891; Act of May 11, 1898
Anderson #2	Perpetual easement, February 23, 1945; Special Use Permit for repair and improvements issued to City, June 7, 1973 (expired)	Act of March 3, 1891; Act of May 11, 1898
Anderson #6	Perpetual easement, October 26, 1929	Act of March 3, 1891; Act of May 11, 1898
Bolen #1	Perpetual easement, October 15, 1914	Act of March 3, 1891; Act of May 11, 1898
Bolen, Anderson & Jacobs #2	Perpetual easement, January 12, 1903 or November 11, 1903	Act of March 3, 1891; Act of May 11, 1898
Carson (a/k/a Hogchute)	Permanent easement, December 2, 1949	Act of February 1, 1905
Flowing Park	Perpetual easement, October 26, 1907	Act of March 3, 1891; Act of May 11, 1898
Raber-Click (a/k/a Hallenbeck #2)	Special Use Permit, December 13, 1946; 10 Year Special Use Permit executed by the City, November 17, 1972; Special Use Permit expired on December 1, 1982 and has not been reissued	Act of June 4, 1897

FACILITY NAME	STATUS OF R.O.W.	FEDERAL AUTHORITY
Somerville	Special Use Permit, October 23, 1992 covering 31 acres or approximately one-third of the reservoir (expires December 31, 2002)	Act of October 21, 1976 (FLPMA)
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
City-Owned Reservoirs on BLM Land		
Juniata	Special Use Permit issued for enlargement, March 12, 1979 covering 1.692 acres (expires March 11, 2009)	Act of October 21, 1976 (FLPMA)
Purdy Mesa (a/k/a Hallenbeck #1)	The high water line is completely on City property. A fence associated with this reservoir lies on federal land.	
City-Owned Ditches, Canals & Diversion Facilities on USFS and BLM Lands		
Anderson Ditch (USFS)	Special Use Permit, May 22, 1957 (expires upon change of ownership)	Act of June 4, 1897
Bolen, Anderson & Jacobs Ditch and Bolen, Anderson & Jacobs Enlarged (USFS)	Perpetual Easement, May 3, 1923	Act of March 3, 1891; Act of May 11, 1898
Bauer Ditch Enlarged (BLM)	Special Use Permit, October 6, 1980 (expires October 19, 2010); Perpetual easement, date uncertain	Act of October 21, 1976 (FLPMA); Act of March 3, 1891; Act of May 11, 1898 (original easement)
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
City By-Pass Ditch: Carson Lake (USFS)	Special Use Permit, July 7, 1947 (expires upon change of ownership)	Act of June 4, 1897
City By-Pass Ditch: B,A, & J Ditch to Bolen Reservoir #1 (USFS)	Perpetual Easement, October 15, 1914	Act of March 3, 1891; Act of May 11, 1898

FACILITY NAME	STATUS OF R.O.W.	FEDERAL AUTHORITY
Guild Ditch, Guild Ditch #1, Guild Ditch #2 (BLM)	Perpetual Easement, August 6, 1912	Act of March 3, 1891 and May 11, 1898
Kannah Creek Flowline (BLM)	Grant of Right-of-Way, March 6, 1914	Act of February 15, 1901
Laurent Ditch, Laurent Ditch Enlarged & Laurent Ditch Second Enlarged (BLM)	Special Use Permit, October 6, 1980 (expires October 19, 2010); Perpetual Easement, October 17, 1906 (original easement)	Act of October 21, 1976 (FLPMA); Act of March 3, 1891; Act of May 11, 1898 (original easement)
North Fork Diversion Pipeline to Purdy Mesa and Juniata Reservoirs (BLM)	Right-of-Way Grant and Temporary Use Permit, December 15, 1986 (expires December 14, 2016)	Act of October 21, 1976 (FLPMA)
Purdy Mesa Flowline (BLM)	Grant of right-of-Way, February 15, 1957	Act of February 15, 1901
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

FACILITY NAME	STATUS OF R.O.W.	FEDERAL AUTHORITY
Other Facilities In Which the City Has An Interest		
Juniata Ditch	The headgate is on private property. The ditch crosses only City and other private land.	
Juniata Ditch Enlarged	The headgate is on City property. The ditch crosses only City and other private property before connecting with the Juniata Ditch.	
AREAS NEEDING FURTHER ATTENTION & PERMIT RENEWALS		
<p>1) Raber-Click Reservoir - The City should determine whether or not to apply for a renewed Special Use Permit. The Special Use Permit for the reservoir expired in 1982 and has not been renewed.</p>		
<p>2) Somerville Reservoir - The Special Use Permit covering thirty-one acres of Somerville Reservoir expires on December 31, 2002. USFS policy is that the permittee must request a reissuance of the Special Use Permit, at least one year prior to expiration.</p>		
<p>3) 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, of which the City owns 22.6%, and the USFS.</p>		
<p>4) Juniata Reservoir - The Special Use Permit covering 1.692 acres of Juniata Reservoir which impact BLM property expires on March 11, 2009. The BLM requires permit holders to apply for a renewal at least three to six months prior to permit expiration. Another option would be to seek title to the small amount of property involved. Currently, the City is involved in discussions with the BLM which could accomplish this.</p>		

AREAS NEEDING FURTHER ATTENTION & PERMIT RENEWALS, CONTINUED

5) Purdy Mesa Reservoir - There is no federal grant of right-of-way either under an easement or Special Use Permit on file at the BLM. BLM has no record of the reservoir on their plats. A small portion of a fence surrounding the reservoir does cross onto BLM land. However, the high water line is located entirely on City property. The City should determine whether or not a Special Use Permit is needed for the small portion of land impacted by the Reservoir. Another option would be to seek title to the small amount of property involved. Currently, the City is involved in discussions with the BLM which could accomplish this.

6) Reservoir Company Facilities - The City should consider sharing this information and possibly meeting with the Chambers, Deep Creek and Grand Mesa Reservoir Companies to discuss the results and to prepare for USFS Forest Plan revision. A modified version of this report, applicable to the Companies, has been prepared. In addition, as all of the Company-owned reservoirs and the Grand Mesa Reservoir Company ditch can demonstrate valid easements or Special Use Permits, there is no need for the Companies to apply for an easement under the 1986 "Ditch Bill." The Ditch Bill provided a grace period for agricultural water facilities on federal lands which could not demonstrate a valid right-of-way.

7) Kannah Creek and Purdy Mesa Flowlines - BLM records indicate that the initial rights-of-way for these pipelines were granted under the Act of February 15, 1901. However, later records, including 1989 BLM file status sheets indicate that the facilities were granted perpetual easements under the Acts of March 3, 1891 and May 11, 1898. Easements granted under these Acts carry more rights than rights-of-way granted under the Act of February 15, 1901. Most notably, the easements cannot be revoked at the sole discretion of the Secretary of the Interior. However, rights-of-way granted under the 1901 Act specifically authorize pipelines for domestic and public use of water. It is unclear if the Acts of March 3, 1891 and May 11, 1898 authorize municipal use water facilities.

8) North Fork Diversion Pipeline to Purdy Mesa and Juniata Reservoirs - The Special Use Permit covering a total of 1.49 acres along 2,240 feet of pipeline expires on December 14, 2016. The BLM requires permit holders to apply for a renewal at least three to six months prior to permit expiration.

9) Bauer Ditch Enlarged, Laurent Ditch, Laurent Ditch Enlarged & Laurent Ditch Second Enlarged - BLM records in the Bauer Ditch file indicate that a thirty-year Special Use Permit was issued on October 6, 1980 which combined the easements for the Bauer Ditch Enlarged and the various Laurent Ditches. However, subsequent BLM status sheets indicate that separate perpetual easements for the ditches granted under the Acts of March 3, 1891 and May 11, 1898 remain in effect.

AREAS NEEDING FURTHER ATTENTION & PERMIT RENEWALS, CONTINUED

10) Brandon Ditch, Brandon Ditch Enlarged, Second Enlarged & Brandon Ditch # 3
- Information in City and Mesa County files indicates that the Brandon Ditch received a perpetual easement under the Acts of July 26, 1866 and July 9, 1870. As this Act did not require the claimant to file anything with the federal agencies, early easements are often missing from government records. The BLM will add the easement information to government plats at no cost for easement holders who can show evidence of water rights and construction. The City should decide if it is interested in having its right-of-way under the Acts of July 26, 1866 and July 7, 1870 for the Brandon Ditch officially recognized in government records.

**BYPASS FLOWS ON THE ARAPAHO AND ROOSEVELT NATIONAL FORESTS:
Implications for the City of Grand Junction's
Grand Mesa Reservoirs and Diversion Facilities**

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 on 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 for the City of Grand Junction

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 City of Grand Junction could find itself waging a similar battle with the Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) to protect the yield of its water supply. However, compared to the entities involved in the ARNF bypass flow dispute, the City of Grand Junction is definitely less vulnerable on several fronts. The reasons for this conclusion follow:

A. Hydrologic Conditions

The creeks downstream from each of the City's reservoirs, with the exception of Carson Lake and Somerville Reservoirs, are dry the majority of the time. However, as the City's 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 City is 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 City's 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 City's 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 City's 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 City of Grand Junction's 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.

The City's wholly-owned reservoirs on USFS land have a total capacity of 3848.38 acre feet. In addition, the City owns 507.87 acre feet of capacity in the reservoirs of the three private companies. In 1993, the City utilized 2540 acre feet of this capacity and in 1994, the City projects that it will use 2718 acre feet. Neither of these figures includes depletions from Somerville Reservoir, approximately one-third of which lies on federal land, which has a capacity of 973.00 acre feet. Somerville Reservoir is excluded from these calculations as it is not used for municipal supply. Finally, the City owns two reservoirs which cross onto BLM land. However, Juniata Reservoir impacts only 1.692 acres of federal land and only that portion is subject to a federal permit. A fence surrounding Purdy Mesa Reservoir appears to cross onto BLM property, however all of the storage is on City property. The BLM has no record of the reservoir.

As long as each reservoir is considered individually and the RIPRAP remains in place, the City should be protected from an endangered species jeopardy opinion. Only Juniata Reservoir has a capacity greater than 3000 acre feet, and only a minuscule portion of this capacity is subject to a BLM permit. What is unclear is if the USFS (or the BLM) could consider the reservoirs as a system with annual depletions of greater than 3000 acre feet. If that were the case, and depletions from Somerville Reservoir, Juniata Reservoir and Purdy Mesa Reservoir were considered, the City would likely cross the 3000 acre feet threshold and new conditions could be imposed. However, this would assume that the USFS and BLM would cooperate in consultation with the USFWS; that reservoirs, the permits for which had not yet expired, or which are authorized by perpetual easement, could be included; and that the total annual yield from Somerville and the lower reservoirs would be considered, as opposed to the yield of the portions on federal land only.

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 several of the City of Grand Junction's facilities are authorized solely by Special Use Permits, the bulk are authorized by perpetual easements granted to their original owners. Three reservoirs, Grand Mesa #1, Scales #1 and Scales #3 were authorized under the Acts of July 26, 1866 and July 9, 1870. The remainder of the facilities with perpetual easements were authorized after the passage of the Act of May 11, 1898 which amended the Act of March 3, 1891 to allow the creation of reservoirs on the public lands for "domestic and public uses" [House Report No. 279, 55th Congress, 2d Session, 1 (1898), quoted in Zelph S. Calder, IBLA 73-433, June 20, 1974]. Local USFS staff has indicated that they consider the easements issued for agricultural purposes to be transferable and intact. In addition, several of the City's reservoirs were issued Special Use Permits for reconstruction and maintenance. Permits issued for reconstruction or maintenance, which did not increase the capacity of the reservoir, expired upon completion of the work. Had the permits 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. Three of the City's reservoirs, Bolen #1, Bolen, Anderson & Jacobs #2, and Juniata have been enlarged. There is no Special Use Permit on file for either Bolen Reservoir #1 or Bolen, Anderson & Jacobs Reservoir #2, both of which were enlarged sometime around 1950. Juniata Reservoir received a Special Use Permit for its second enlargement in 1979. This permit expires in 2009.

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 Grand Mesa facilities in which the City has an interest, Grand Mesa Reservoir #1, Scales Reservoir #1, Scales Reservoir #3, and the Brandon Ditch 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.

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 City of Grand Junction will be allowed to 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 City should help ensure that potential new requirements will not have an unforeseen adverse impact on the operation of the City's 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 City of Grand Junction's facilities, several areas have emerged which should be considered for further attention:

A. The Transferability of Easements Granted Under the Acts of March 3, 1891 and May 11, 1898 from Agricultural to Municipal Uses

The Act of March 3, 1891 granted rights-of-way to irrigation districts and canal ditch companies for irrigation purposes. This Act was amended by the Act of 1898 which allowed additional uses "for purposes of a public nature." This has been interpreted as allowing use of water for domestic and public uses, including municipal use [House Report No. 279, 55th Congress, 2d Session, 1 (1898); Zelph S. Calder, 16 I.B.L.A. 27 (June 20, 1974)]. However, water counsel for the City has raised questions regarding the transferability for these easements based on an interpretation

of the law by the Colorado Supreme Court in Bijou Irrigation District v. Empire Club. As this case dealt with a transfer of use from agriculture to recreation, it appears that it may not be completely analogous to changes from agriculture to municipal use. Finally, the Act of February 1, 1905 expressly provided rights-of-way for municipal uses. This Act was self-executing, meaning that the applicants were not required to file an application, except in the case of new construction. The USFS did not issue any documentation of the right-of-way. Attorneys representing the Cities of Boulder and Greeley in the bypass flow dispute with the USFS indicated that reservoirs which changed from agricultural to municipal use prior to the passage of FLPMA in 1976 automatically received a perpetual easement under the Act of February 1, 1905.

Six of the City's eleven wholly-owned reservoirs, four of the eight company-owned reservoirs, three of the City's twelve wholly owned ditches, and all of the ditches owned by Companies in which the City holds an interest which are located on federal lands are authorized by easements under the Act of March 3, 1891, as amended by the Act of May 11, 1898. Each of these was originally developed for agricultural use and subsequently purchased by the City for municipal use. USFS staff based in Collbran³ indicated that the easements were completely assignable and transferable. They also indicated that there would be no loss of rights due to a change from agricultural to municipal use. If a reservoir had been enlarged or repairs to the reservoir resulted in increased capacity, a Special Use Permit would be necessary and this permit would provide the right-of-way for the enlarged portion only. Otherwise, the original easement remains intact and is not subject to any renewal provisions or change in condition of use. The City may wish to consult with legal counsel further on this matter.

B. 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 but two of the City's 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. The remaining two reservoirs do not lie above dewatered or dry streams.

³ Jim Jacobson.

C. RIPRAP "Reasonable and Prudent Alternative" Protection

Currently, the RIPRAP provides a measure of protection to the City that its reservoirs will not be subject to Endangered Species Act (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 City support the fish recovery process as much as possible. Monitoring of the fish recovery negotiations between the Bureau of Reclamation, the USFWS and the State should continue. In addition, the City should continue to support measures which will provide water to the "fifteen mile reach" of the Colorado River in the Grand Valley. Opportunities for the City to utilize its conditional rights on the Gunnison River and its Colorado River water rights in a manner which benefits both the City and fish recovery should continue to be explored.

In addition, the City should further explore whether or not the USFWS can consider the City's reservoirs as a system. This matter should be discussed with the Colorado Water Conservation Board (CWCB). If a case can be made by the USFWS or the USFS which justifies consideration of the City's entire Grand Mesa system, annual depletions will likely exceed 3000 acre feet and the RIPRAP will no longer offer protection. The USFS is required to consult with the USFWS prior to undertaking any major federal action. Reissuance of an expiring Special Use Permit should trigger consultation. Grand Mesa #9 is the only reservoir authorized completely by Special Use Permit. This permit does not expire unless the reservoir changes ownership.⁴ In addition, approximately one-third of Somerville Reservoir is covered by a USFS Special Use Permit. The Somerville permit expires on December 31, 2002. The Special Use Permit for Raber-Click Reservoir expired on December 1, 1982. At some point, this reservoir will most likely need to be re-permitted. Finally, Juniata Reservoir received a Special Use Permit for 1.692 acres of BLM land during the 2nd enlargement. This permit expires on March 11, 2009. However, as it is a BLM permit, it is less likely that the USFS will try to address this reservoir in any definition of a Grand Mesa system.

Should the USFS seek consultation with the USFWS regarding any of the City's reservoirs, either during Forest Plan revision or upon expiration of current Special Use Permits, the City should request that it be a party to the consultation. The Colorado Water Conservation Board (CWCB), as a partner with the USFWS in the RIPRAP, should be notified and its support for the City sought.

⁴ In 1968, the Grand Mesa Reservoir Company applied for a Special Use Permit for Grand Mesa #9. The USFS recommended approval of the permit. In November 1994, the USFS discovered that they have no record of the Special Use Permit being issued. Thus, it is currently unclear whether or not a Special Use Permit for Grand Mesa #9 exists. Until the USFS questioned the permit, the Company was under the impression that the authorization for the reservoir was completely in order.

D. Forest Management Plan Revision

It seems likely that if the USFS is going to try to address the City's Grand Mesa reservoirs as a system, it will do this during revision of the Forest Management Plan for the Grand Mesa, Uncompahgre, Gunnison National Forest. This 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 City has a right to participate in Forest Management Plan revision and a critical interest in any changes which might occur. Therefore, the City should remain in contact with the GMUG Forest Supervisor's office in Delta to ensure participation in this process. 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 City so long as the USFS provides its permit and easement holders with flexibility in meeting environmental targets. In addition, in 1991 when the USFS issued a Final Supplemental Environmental Impact Statement (FSEIS) for the Grand Mesa, Uncompahgre and Gunnison National Forests, the City requested that the Kannah Creek Watershed be classified as a Class 10E Municipal Watershed, with the special management prescriptions which this entails. The USFS responded that a change a classification must be made during Forest Management Plan revision. Attention should be given to ensuring that this designation is achieved. A copy of the City's letter to the USFS and the USFS reply are found on pages VI-117 and VI-118 of the FSEIS. In August 1994, the City also signed a memorandum of agreement with the USFS pledging cooperation within the Kannah Creek watershed. Action such as this and the development of a working, cooperative relationship with the USFS during Forest Plan revision could serve the City far into the future and will lay the groundwork for the development of cooperative solutions to any impasses which might occur.

E. 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. Although the case law is unclear, a strong case can be made for easements issued after 1898 that the "public purposes" language in the 1898 amendments was intended to protect municipal uses. Furthermore, the Act of February 1, 1905 granted rights-of-way for municipal purposes. As it was self-executing, grantees were not required to submit plats for approval and did not receive documentation

of their rights-of-way from the Interior Department. Therefore, it can be asserted that when reservoirs changed from agricultural to municipal use the right-of-way was automatically vested under the Act of February 1, 1905.

- 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 CWCB can be of help, especially with regard to issues with the 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 by modifying operations habitat could be restored without reducing reservoir yield. 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.

F. 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. The City may want to contact Senator Brown's staff and review any draft or introduced legislation on this matter. If the legislation looks beneficial to the City, staff and the City Council 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 natural resources, 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 City of Grand Junction's Grand Mesa Reservoirs and Diversion Facilities

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 facility, owned wholly or partially by the City, 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 the City's 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.

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

Anderson #1

Status of Right-of-Way:	Perpetual easement, July 1, 1910; City executed updated stipulations on July 17, 1963
Application for Right-of-Way Filed:	May 15, 1909
Federal Authority:	Act of March 3, 1891; Act of May 11, 1898
File Number:	Denver 050746 (Montrose 03785) ⁵
Water Rights Appropriation Date:	November 24, 1911
Decree Date:	July 25, 1941
Decree Amount:	466.00 acre feet
Current Capacity:	506.00 +/- acre feet

The easement for Anderson Reservoir #1 was issued to Robert T. and Maggie Anderson on July 1, 1910. Their application for an easement was received on May

⁵ Files numbers in parentheses are old file numbers from defunct Department of the Interior General Land Offices. They are provided in this summary because much of the information is cross-filed and older documents tend to remain filed under the old numbers.

15, 1909, at which time they also applied for an easement for the Anderson #2 site. The City of Grand Junction purchased the reservoir from the Anderson family in 1955. In 1963, the City reconstructed the dam at Anderson #1, however a Special Use Permit was not issued, as borrow material was taken from inside the reservoir basin. On July 17, 1963, the City signed updated USFS stipulations.

Anderson #2

Status of Right-of-Way:	Perpetual easement, February 23, 1945; Special Use Permit for repair and improvements issued to City, June 7, 1973 (expired)
Application for Right-of-Way Filed:	May 15, 1909
Federal Authority:	Act of March 3, 1891; Act of May 11, 1898
File Number:	Denver 050746 (Montrose 03785)
Water Rights Appropriation Date:	October 5, 1928
Decree Date:	July 25, 1941; July 21, 1959
Decree Amount:	433.36 acre feet; 135.04 acre feet
Current Capacity:	595.00 +/- acre feet

Robert T. and Maggie Anderson applied for an easement for Anderson Reservoir #1 and Anderson Reservoir #2 on May 15, 1909. In 1937, the USFS initiated forfeiture proceedings against the Andersons, as Anderson Reservoir #2 had not been completed and the site was desired for a landing strip to facilitate commercial air service between Grand Junction and the Grand Mesa. At this time, the Andersons indicated that they would not forfeit their right-of-way and resumed construction of the dam. On August 4, 1937, the Grand Junction City Council passed a resolution endorsing the development of a landing strip at the Anderson #2 site on Grand Mesa. However, on October 4, 1937, the USFS wrote a letter to the General Land Office suspending forfeiture proceedings, as there was "no immediate prospect of actual use of the site as an airplane landing field." Work on the dam continued and the easement was granted on February 23, 1945 when proof of construction was submitted.

Anderson #2 was acquired by the City of Grand Junction in 1955. On March 3, 1973 a Special Use Permit was issued free of charge to the City to "repair and improve Anderson Reservoir #2." This Permit expired upon completion of the repairs.

Anderson #6

Status of Right-of-Way: Perpetual easement, October 26, 1929

Application for Right-of-Way Filed: June 8, 1929

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

File Number: Denver 041821

Water Rights Appropriation Date: October 5, 1928

Decree Date: July 21, 1959

Decree Amount: 57.32 acre feet

Current Capacity: 118.00 +/- acre feet

On June 8, 1929, Robert T. Anderson filed an application for a right-of-way for Anderson Reservoir #6. The perpetual easement was approved on October 26, 1929, when a map of the site was approved by the General Land Office. At this time, the dam had not been completed. In 1934, the USFS inspected the site and notified the Andersons that the reservoir must be completed by January 1, 1937. In 1944, the USFS required the Andersons to file proof of construction and show that they were putting the reservoir to beneficial use. At this time, they received an extension. Proof of construction was accepted on February 23, 1945, the same day that the easement for Anderson #2 was granted.

The City acquired Anderson #6 in 1955 and in 1970 the USFS District Ranger wrote a letter to the City authorizing maintenance work on the dam. As no "change in the dam nor the storage area" was contemplated, this appears to be all the authorization which was needed, and a Special Use Permit was not issued.

Bolen #1

Status of Right-of-Way: Perpetual easement, October 15, 1914

Application for Right-of-Way Filed: November 22, 1910

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

File Number: Montrose 06266

Water Rights Appropriation Date: November 25, 1911 (original)
September 15, 1949 (enlarged)

Decree Date: July 25, 1941 (original)
July 21, 1959 (enlarged)

Decree Amount: 383.30 acre feet (original)
152.44 acre feet (enlarged)

Current Capacity: 521.08 +/- acre feet

Henry Bolen applied for an easement for Bolen Reservoir #1 and a supply ditch on November 22, 1910. Previous to this, on February 8, 1910, a Special Use Permit was issued to R.T. Anderson for Bolen Reservoir #1. Apparently, Henry Bolen received a Special Use Permit for the site on October 26, 1907. He then sold his interest in the site to Anderson on November 13, 1909 and the USFS issued a permit to Anderson to protect his rights until the easement was approved by the Interior Department's Land Office. For some reason, however, Bolen was the one to initiate the proceedings to obtain an easement on November 22, 1910. Bolen then died and on October 15, 1914, a perpetual easement for irrigation purposes was issued to Anderson. Anderson's interim Special Use Permit was terminated June 28, 1917.

In 1955, the City of Grand Junction acquired the rights to Bolen Reservoir, Bolen Reservoir Enlarged and the supply ditch from the Andersons. There is no Special Use Permit on file which pertains to the enlargement of the reservoir sometime around 1950. In May 1971 and November 1973, internal USFS memos indicate that the City had "indefinitely deferred" plans to enlarge Bolen Reservoir #1. However, on August 6, 1974, a USFS memo indicates that drawings and specifications for enlargement of the reservoir had been accepted by the USFS. An Environmental Assessment Report was apparently submitted prior to this time. However, there is no indication that a Special Use Permit for the enlargement was ever issued and no indication that the City did, in fact, undertake this work.

Bolen, Anderson & Jacobs #2

Status of Right-of-Way: Perpetual easement, January 12, 1903 or
November 11, 1903

Application for Right-of-Way Filed: July 13, 1902

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

File Number: Denver 36042

Water Rights Appropriation Date: November 12, 1911 (original)
July 1, 1949 (enlarged)

Decree Date: July 25, 1941 (original)
 July 21, 1959 (enlarged)

Decree Amount: 11.10 acre feet (original)
 281.90 acre feet (enlarged)

Current Capacity: 240.00 +/- acre feet

BLM and USFS files show the date upon which an easement for Bolen, Anderson & Jacobs Reservoir #2 was issued to Henry Bolen, Maggie Anderson and F.W. Jacob as either January 12, 1903 or November 16, 1903. The application for an easement was submitted on July 13, 1902.

The City acquired the rights to Bolen, Anderson & Jacobs #2, and Bolen, Anderson & Jacobs #2 Enlarged from the Andersons in 1955. Although it is apparent that the reservoir was substantially enlarged around 1950, there is no Special Use Permit included in government files. In addition, a letter from the State Division of Water Resources to the City on August 22, 1968 indicates that plans for the enlargement were not filed with the State Engineer. On October 7, 1968, the City filed plans for the rehabilitation of Bolen, Anderson & Jacobs #2. A Special Use Permit does not appear to have been issued for the rehabilitation, if in fact this work was undertaken.

Carson Lake (a/k/a Hogchute)

Status of Right-of-Way: Permanent easement, November 2, 1949

Application for Right-of-Way Filed: December 23, 1946 (easement); May 28, 1947 (special use permit)

Federal Authority: Act of February 1, 1905

File Number: Denver 054883

Water Right Appropriation Date: June 3, 1946

Decree Date: July 21, 1959

Decree Amount: 637.00 acre feet

Current Capacity: 637.00 +/- acre feet

In 1924, W.C. Farmer and his son, William Farmer, applied for an easement to construct a reservoir at the site where Carson Lake is located. That same year, but after the Farmer application, the City of Grand Junction applied for a reservoir easement. The Farmers' application was approved. In 1936, C.V. Hallenbeck

secured a quit claim deed from Mrs. Nevada Farmer for the Carson Lake site. As the Farmers had never built the reservoir, the General Land office ruled that the Farmers had no interest in the site and Hallenbeck had not secured a right to the site. Subsequent to this decision, both the City and Hallenbeck filed for an easement for the site. In September 1946, the USFS notified the City that an easement would be issued shortly, but that the City needed to reapply. This was done in December 1946. Issuance of the easement was delayed and on May 28, 1947 the City requested an interim Special Use Permit so that construction of the reservoir could begin.

On November 2, 1949, an easement for municipal purposes was granted for Carson Lake Reservoir. The interim Special Use Permit was canceled on December 16, 1949. On November 27, 1968, proof of construction was belatedly accepted by the USFS and it was determined that "due to lack of funds the City did not build the dam as large as shown on their 1946 filing map." In June 1947, an internal USFS memo indicated that the City had revised its reservoir plans and had reduced the size of the proposed dam from sixty-five feet high to fifty-one feet high. According to this memo, the City Engineer indicated that the City still desired the easement for the larger dam and that the City would later relinquish the unconstructed portion. There is nothing in the files that indicates whether or not the unconstructed portion was relinquished.

Flowing Park

Status of Right-of-Way:	Perpetual easement, April 17, 1908
Application for Right-of-Way Filed:	October 26, 1907
Federal Authority:	Act of March 3, 1891; Act of May 11, 1898
File Number:	Montrose 03594
Water Rights Appropriation Date:	November 27, 1911
Decree Date:	July 25, 1941
Decree Amount:	782.17 acre feet
Current Capacity:	772.00 +/- acre feet

J.C. Wallace filed for an easement for Flowing Park Reservoir on October 26, 1907. Prior to this, statements were filed with Mesa County, Colorado under #66194 and #66195 on February 5, 1907 for Flowing Park Reservoirs #1 and #2. On May 8, 1907, a plat of Flowing Park Reservoir was filed with the County under #67996. The Department of the Interior approved a map of the reservoir on April 17, 1908 and

the right-of-way was issued. A letter to the USFS on May 1, 1913 indicates that Wallace sold Flowing Park to H.B. White, S.A. Dugger and J.B. Walker. An internal USFS memorandum dated December 7, 1939, indicates that Flowing Park Reservoir had been sold to the City of Grand Junction. However, a summary of the City's water rights prepared in 1991 by Jim Dufford indicates that the reservoir was constructed by the City of Grand Junction. Neither this document nor government files provided any insight as to when the site was purchased, from whom it was purchased, and whether or not the dam had been partially or wholly constructed at the time of purchase.

A Forest Service inspection on August 28, 1911 reported that in one year of work, a dam 1200 feet long and eleven feet high was in place. This report was signed by the Assistant Forest Ranger. However, in 1913 a report from the Acting Forester to the Commissioner of the General Land Office indicated that a dam 800 feet long, ten feet high and forty feet wide at its base had been constructed.

Raber-Click (a/k/a Hallenbeck #2)

Status of Right-of-Way:	Special Use Permit, December 13, 1946; 10 Year Special Use Permit executed by the City, November 17, 1972 (expired December 1, 1982)
Application for Right-of-Way Filed:	n/a
Federal Authority:	Act of June 4, 1897
File Number:	2720 Hallenbeck Reservoir Company Reservoir #2, 12/13/46; 2720 City of Grand Junction Reservoir (Raber-Click)
Water Rights Appropriation Date:	October 17, 1923
Decree Date:	July 21, 1959
Decree Amount:	526.11 acre feet
Current Capacity:	459.30 +/- acre feet

In 1965, the City of Grand Junction purchased twenty-seven shares of Hallenbeck Reservoir #2 Company stock from John P. and Wilbur Raber thus acquiring 100% interest in Hallenbeck Reservoir #2 (now Raber-Click Reservoir). Previously the City had purchased fifty-one shares in the Company from C.V. Hallenbeck and twenty-one shares from Fred E. and Ica M. Click. In early 1970, the USFS sought from C.V. Hallenbeck a relinquishment of the original Special Use Permit issued to

the Company on December 12, 1946. It is unclear through what means Hallenbeck acquired the reservoir, which was previously known as Deep Creek #1. USFS records indicate that the reservoir was originally authorized under the Acts of 1891 and 1898, but was relinquished by the Deep Creek Reservoir Company around 1926. C.V. Hallenbeck relinquished his rights to Hallenbeck #2 on January 30, 1970 and the City applied for a Special Use Permit on the same day. At this time, the USFS indicated that the dam was deteriorating and sought to develop with the City a schedule for rehabilitation of the dam. A Special Use Permit was issued to the City free of charge on November 17, 1972.

On March 12, 1982, the USFS sent a letter to the City informing them that the Special Use Permit for Raber-Click Reservoir would expire on December 1, 1982. The letter informed the City that the permit could be reissued "provided the permittee will comply with the then-existing laws and regulations governing the occupancy and use of the National Forest lands." The City was also directed to request a reissuance. A reissuance was requested by the City on May 20, 1982. The permit has never been reissued, however, as the City and the USFS could not come to agreement regarding whether or not an annual fee should be charged for the renewed Special Use Permit. A letter dated May 30, 1989 from the USFS District Ranger to the City indicated that the City must either pay \$4,098.71 to cover the period since the permit expired in 1982 or discontinue use of the reservoir. There was no more current information available in either USFS or City files. Therefore, it appears that the City is currently operating Raber-Click Reservoir without either a Special Use Permit or a perpetual easement. Should the City seek a new Special Use Permit, it will likely be charged at least \$9.49 per acre or \$585.53 per year (the rate proposed in 1989). To cover operations through 1994, the City would owe the USFS approximately \$7,026.36.

Somerville (Sommerville on USFS Special Use Permit)

Status of Right-of-Way:	Special Use Permit, October 23, 1992; expires December 31, 2002
Application for Right-of-Way Filed:	n/a
Federal Authority:	Act of October 21, 1976 (FLPMA)
File Number:	1003-01 (User Number)
Water Rights Appropriation Date:	July 19, 1945 September 1, 1894 (Cliff Lake) unknown

Decree Date:	July 21, 1959 June 1, 1916 (Cliff Lake) August 17, 1992
Decree Amount:	837.00 acre feet 70.8 acre feet (Cliff Lake) 66.00 acre feet
Current Capacity:	973.00 +/- acre feet

On January 5, 1990, the City purchased the Somerville Ranch and acquired Somerville Reservoir. Although the reservoir was in existence prior to 1990, and although approximately one-third of the reservoir lies on USFS lands, there was no record in USFS files regarding the original easement or permit for the construction of the reservoir. A Special Use Permit covering thirty-one acres for the purpose of "operating and maintaining the Sommerville (sic) Reservoir to impound irrigation water for use on the permittee's privately owned land outside the National Forest boundary," was issued to the City on October 23, 1992. The Special Use Permit expires on December 31, 2002. At that time, it can be renewed subject to "then existing laws and regulations governing the occupancy and use of National Forest lands."

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) ⁶ 350.00 (absolute)
Current Capacity:	353.00 +/- 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 estimated combined yield is 259.90 acre feet.

⁶ 350.00 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.

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 filings 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 application filed, November 7, 1968

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.

CITY-OWNED RESERVOIRS ON B.L.M. LAND

Juniata

Status of Right-of-Way:	Special Use Permit easement issued for enlargement, March 12, 1979 (expires March 11, 2009)
Application for Right-of-Way Filed:	n/a
Federal Authority:	Act of October 21, 1976 (FLPMA)
File Number:	COC 27016
Water Right Appropriation Date:	November 1, 1911 (original) June 17, 1953 (1st enlargement) April 2, 1967 (2nd enlargement)
Decree Date:	July 25, 1941 (original) July 21, 1959 (1st enlargement) October 24, 1984 (2nd enlargement)

Decree Amount: 400.094 acre feet (original)
2313.00 acre feet (1st enlargement)³
4156.60 acre feet (2nd enlargement)⁴

Current Capacity: 6868.00 +/- acre feet

The Juniata Reservoir lies almost entirely on City property. Both the reservoir and the surrounding property were acquired through transactions between the City and the Hallenbeck family, the Raber family, and John Grounds. In 1979, the City was granted a thirty year right-of-way from the Department of the Interior for 1.692 acres to be impacted by the second enlargement of the Juniata Reservoir. This right-of-way was issued under the Federal Lands Policy and Management Act (FLPMA) and no fee was levied. It expires on March 11, 2009.

According to an environmental assessment prepared by the City as part of its application for a right-of-way, the reservoir was established sometime around 1914. A plat of Juniata Reservoir, located in Section 31, Twp 12 S, R 97 W, 6th PM was filed by John Parton, Samuel L. Purdy, J.M. Walker and E. Purdy in Mesa County on June 16, 1890. County records also indicate that the Juniata Reservoir Company was incorporated on May 27, 1893. On August 3, 1909, George Smith filed a plat for the enlargement of Juanita (sic) Reservoir and neighboring Ternahan Reservoir #2. Subsequently, on March 31, 1910, R.H. Sawyer filed a plat for the enlargement of the same two reservoirs. Both of these plats show Juniata or Juanita reservoir as being located entirely on government lands in Section 31, Twp 12 S, R 97 W, 6th PM. City records show that portions of the land underlying Juniata Reservoir were transferred to private ownership in 1923, 1924 and 1959.

The Bureau of Land Management has in its records a perpetual easement issued August 27, 1956 under the Act of March 3, 1891 to the Juniata Reservoir Company for the purpose of enlarging a reservoir. This corresponds to the time when Juniata Reservoir was undergoing its "first" enlargement. There were neither supporting documents nor a copy of the 1956 easement or application in BLM files. When the BLM approved the thirty year right-of-way in 1979, no mention was made of any previous easement, special use permit or right-of-way.

³ A decree of 3435.41 acre feet was obtained for the 1st enlargement during the 1959 general adjudication. Of this amount, 751 acre feet was decreed an absolute right, with the balance of 2684.41 being conditional. On November 14, 1962, an additional 1562 acre feet was made absolute. The remaining 1122.41 acre feet of the original decree was canceled by order of the Water Court on September 22, 1970.

⁴ On February 22, 1971 C.V. Hallenbeck applied for a conditional decree of 5948.7 acre feet for the 2nd enlargement of Juniata Reservoir. That same year, the City of Grand Junction acquired Juniata Reservoir. In 1984, 4156.6 acre feet was made absolute and the decree awarded to the City. The remaining 1794 acre feet is conditional.

Purdy Mesa (a/k/a Hallenbeck #1)

Status of Right-of-Way: There is no federal grant of ROW under either an easement or a Special Use Permit on file with the BLM.

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

Federal Authority: n/a

File Number: n/a

Water Right Appropriation Date: September 1, 1939

Decree Date: July 25, 1941

Decree Amount: 863.00 acre feet

Current Capacity: 659.00 +/- acre feet

On November 19, 1954, the City of Grand Junction acquired this reservoir from C.V. Hallenbeck, along with a variety of water rights and land. At the time of purchase, the reservoir was known as Hallenbeck Reservoir #1. It appears from plats filed with Mesa County, that the reservoir was originally known as Ternahan Reservoir #2. Plats for the enlargement of this reservoir were filed in 1909 and 1910. Both of these plats indicate that the reservoir was located entirely on government property in Section 36, Twp 12 S, R 98 W, 6th PM. However, there is no record of a filing or application for a Right-of-Way from the Department of the Interior, and the reservoir does not appear on current Bureau of Land Management plats.

City records show that the land underlying Purdy Mesa Reservoir was transferred from the BLM to private ownership in 1920, 1923 and 1937. These records also show that Purdy Mesa Reservoir does, in part, impact a small amount of BLM lands where a fence crosses over from City property. However, the high water line is completely on City property. As no water is stored on BLM land, it is unclear whether or not a Special Use Permit is necessary. This matter may need to be taken up with BLM.

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

Anderson Ditch #4

Status of Right-of-Way: Special Use Permit, May 22, 1957 (expires upon change of ownership)

Application for Right-of-Way Filed: April 5, 1957

Federal Authority: Act of June 4, 1897
File Number: 2720 City of Grand Junction
Water Transmission Line, 4/5/57
Water Right Appropriation Date: April 1, 1889
Decree Date: June 1, 1916
Decree Amount: .29 cfs

On March 29, 1957, W.L. and F.E. Anderson requested that the USFS terminate a Special Use Permit issued to Anderson Brothers, W.L. & F.E. on September 1, 1954 as the ditch had been sold to the City of Grand Junction. The City then applied on April 5, 1957 for a Special Use Permit for the ditch, which lies entirely on USFS property and runs from Coal Creek to Anderson Reservoir #6. The Special Use Permit was issued on May 22, 1957. It expires upon a change of ownership. The City's Special Use Permit covers .76 miles at a width of ten feet on either side of the ditch.

A listing of the City's water rights, prepared in 1991, states that Anderson Ditch #4 has a right of .29 cfs which was appropriated on April 1, 1889 and decreed on June 1, 1916. It appears that the ditch permitted to the Anderson Brothers by the USFS in 1954 is the same as the Anderson #4 Ditch. The earliest right-of-way information contained in the USFS file was the letter terminating the Anderson Brothers' 1954 Special Use Permit.

Bauer Ditch Enlarged

Status of Right-of-Way: Special Use Permit, October 6, 1980
(expires October 19, 2010)
Application for Right-of-Way Filed: June 18, 1980
Federal Authority: Act of October 21, 1976 (FLPMA)
Act of March 3, 1891; Act of May 11,
1898 (original easement)
File Number: C-30221
Water Right Appropriation Date: March 25, 1910
Decree Date: June 1, 1916
Decree Amount: 13.18 cfs

In 1980, the City applied to the BLM for a right-of-way to extend the existing Bauer ditch 195 feet upstream and to build a new diversion structure for the ditch. The purpose of the extension was to prevent peak flows from washing out the original point-of-diversion. A thirty year right-of-way was granted on October 6, 1980. On September 10, 1980, the BLM issued a Decision Record Rationale for the Bauer Ditch Enlargement which stated that the City would receive a 116.87 foot long and fifty foot wide right-of-way for one year. After one year, and for the remainder of the term of the Special Use Permit, the width would be reduced to thirty feet. 0.22 acre of public land was covered by the Permit. In addition, the rationale states that the existing right-of-way for the Laurent Ditch would be updated under FLPMA. It appears that the BLM combined the rights-of-way for the Bauer Ditch and the Laurent Ditch and superseded the original easements. A September 11, 1980 memo shows a single file number for the City of Grand Junction's Bauer and Laurent Ditch Rights-of-Way. However, an internal 1989 BLM status sheet states that the Bauer ditch is authorized under the Act of March 3, 1891, as amended by the Act of May 11, 1898. Special Use Permits were not issued under the 1891 and 1898 Acts, but easements for irrigation and public purpose facilities were. There was no further information in the file to indicate the status of the original Bauer Ditch easement. The City's Water Rights Decree book states that R.T. Anderson began work on the Bauer Ditch Enlarged on March 25, 1910. This would place the ditch under the Act of March 3, 1891 and the Act of May 11, 1898.

In 1955, the City of Grand Junction purchased the Bauer Ditch and Bauer Ditch Enlarged water rights as part of the Anderson acquisition. The Laurent Ditch and its associated water rights were also acquired during this purchase. The original Bauer Ditch right of 1.96 cfs has been transferred to the City Ditch which runs from the North Fork of Kannah Creek to Purdy Mesa and Juniata Reservoirs. The headgate for the Bauer Ditch is on BLM property. The ditch crosses BLM, City and private property before joining the Laurent Ditch on City property.

Bolen, Anderson & Jacobs Ditch and Bolen, Anderson & Jacobs Ditch Enlarged

Status of Right-of-Way:	Perpetual Easement, May 3, 1923
Application for Right-of-Way Filed:	February 11, 1918
Federal Authority:	Act of March 3, 1891; Act of May 11, 1898
File Number:	Montrose 012258
Water Right Appropriation Date:	July 25, 1901 September 12, 1922 (enlarged)

Decree Date: June 1, 1916
July 25, 1941 (enlarged)

Decree Amount: 9.59 cfs
19.8 cfs (enlarged)

On May 3, 1923, a perpetual easement was issued to Robert T. Anderson, Frank C. Fanning, Hiram R. Palmer and Charles F. Schoening for a 12,417 foot long ditch connecting Anderson Reservoir #1 and Bolen Reservoir. On June 16, 1921 new stipulations were executed by Robert T. Anderson, Arthur Q. McCabe and Grover C. McCabe to whom Fanning, Palmer and Schoening apparently sold their interest in the ditch. Water for the Bolen, Anderson & Jacobs Ditch Enlarged was appropriated in 1922. The City of Grand Junction purchased the ditch from the Andersons in 1955. The entire ditch is on USFS property.

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

Status of Right-of-Way: Perpetual Easement, date uncertain

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

Federal Authority: Act of July 26, 1866; Act of July 9, 1870

File Number: n/a

Water Right Appropriation Date: June 30, 1883 (Priority 3, Transfer from Ewers Ditch)
August 9, 1884 (Priority 3, Transfer from Pioneer of Whitewater)
July 20, 1883 (Number 3, Priority 2)
January 1, 1900 (Enlarged)
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.

City By-Pass Ditch - B, A & J Ditch to Bolen Reservoir #1

Status of Right-of-Way: Perpetual Easement, October 15, 1914

Application for Right-of-Way Filed: November 22, 1910

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

File Number: Montrose 06266

Water Right Appropriation Date: n/a

Decree Date: n/a

Decree Amount: n/a

Henry Bolen applied for an easement for Bolen Reservoir #1 and a supply ditch on November 22, 1910. Previous to this, on February 8, 1910, a Special Use Permit was issued to R.T. Anderson for Bolen Reservoir #1. Apparently, Henry Bolen received a Special Use Permit for the site on October 26, 1907. He then sold his interest in the site to Anderson on November 13, 1909 and the USFS issued a permit to Anderson to protect his rights until the easement was approved by the Interior Department's Land Office. For some reason, however, Bolen was the one to initiate the proceedings to obtain an easement on November 22, 1910. Bolen then died and on October 15, 1914, a perpetual easement for irrigation purposes was issued to Anderson. Anderson's interim Special Use Permit was terminated June 28, 1917. The easement provided to Anderson provided a right-of-way for a one-half mile long, six foot wide ditch.

In 1955, the City of Grand Junction acquired the rights to Bolen Reservoir, Bolen Reservoir Enlarged and the supply ditch from the Andersons. The by-pass ditch draws water from Bolen, Anderson, & Jacobs Ditch to Bolen Reservoir #1. It lies completely on USFS land.

City By-Pass Ditch - Carson Lake

Status of Right-of-Way: Special Use Permit, July 7, 1947

Application for Right-of-Way Filed: July 2, 1947

Federal Authority: Act of June 4, 1897

File Number: 2720 Grand Junction, City of
Ditch 7/7/47

Water Right Appropriation Date: n/a

Decree Date: n/a

Decree Amount: n/a

On July 7, 1947, the City of Grand Junction received a Special Use Permit to construct and maintain a by-pass ditch around the north side of Carson Reservoir (then Hogchute Reservoir). The ditch lies completely on USFS land. The right-of-way conveyed by the Special Use Permit is approximately 3000 feet long and forty

feet wide. As Carson Lake Reservoir was built at the headwaters of Kannah Creek, the by-pass ditch provides a means for releasing water downstream in order to avoid interfering with other water rights. According to a letter from the City to the USFS in 1981, the City intended to clean and repair the by-pass ditch during the Summer of 1982.

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.

Kannah Creek Flowline

Status of Right-of-Way:	Grant of Right-of-Way, March 6, 1914
Application for Right-of-Way Filed:	December 27, 1911
Federal Authority:	Act of February 15, 1901
File Number:	M-06676

Water Right Appropriation Date: December 30, 1881 (Paramount Decree)
May 1, 1929

Decree Date: January 11, 1911 (Paramount Decree)
July 25, 1941

Decree Amount: 7.81 cfs (Paramount Decree)
3.908 cfs

The City of Grand Junction received a grant of right-of-way for its Kannah Creek Flowline on March 6, 1914. According to a letter dated January 31, 1914 from the City to the US Land Office, the City's application for a right-of-way was made under the Act of February 15, 1901. A 1955 letter from the Land Office to the City Attorney reiterated this fact. However, an internal 1989 BLM status sheet states that a perpetual easement was granted under the Acts of March 3, 1891 and May 11, 1898.

On December 20, 1973 the City applied to modify its right-of-way to allow a relocation. The right-of-way was modified on April 17, 1974 and the City relinquished a portion of the original right-of-way which was no longer needed on March 11, 1975. Finally, on October 13, 1988, the City filed for an amendment to add hydropower facilities to the flowline. On February 16, 1989, the BLM approved the amendment and added this authority to the right-of-way. The hydropower facilities were never constructed. The headgate for the flowline is on City property. The flowline crosses BLM and private property as it makes its way to the City's water plant.

Laurent Ditch Enlarged & Laurent Ditch Second Enlarged

Status of Right-of-Way: Special Use Permit, October 6, 1980
(expires October 19, 2010); Perpetual
Easement, October 17, 1906 (original
easement)

Application for Right-of-Way Filed: June 18, 1980; September 20, 1905
(original easement)

Federal Authority: Act of October 21, 1976 (FLPMA)
Act of March 3, 1891; Act of May 11,
1898 (original easement)

File Number: C-30221 (Montrose 016503)

Water Right Appropriation Date: March 31, 1919 (Priority 510, Enlarged)
June 2, 1921 (Priority 528, Second

	Enlarged) June 1, 1916 (Priority 648, Enlargement)
Decree Date:	July 25, 1941 (Priority 510, Enlarged) July 25, 1941 (Priority 528, Second Enlarged) July 21, 1959 (Priority 648, Enlargement)
Decree Amount:	15.32 cfs (Priority 510, Enlarged) 18.40 cfs (Priority 528, Second Enlarged) 1.00 cfs (Priority 648, Enlargement)

According to a 1941 Water Court Decree, the Laurent Ditch was entitled to the use of priority number 648 in common with the Bauer Ditch and Reeder Reservoir. The City acquired the Laurent Ditch and water rights as part of the Anderson purchase in 1955. The original General Land Office file number for the Laurent Ditch is Montrose 016503. With the exception of a 1990 internal BLM status sheet, the most current information in BLM files is a 1925 letter verifying that the ditch was constructed. The internal status sheet states that the ditch holds a perpetual easement under the Acts of March 3, 1891 and May 11, 1898 and that it is owned by Gilbert and J.A. Laurent.

According to information in BLM files on the Bauer Ditch, the BLM combined the easements for the Bauer Ditch and the Laurent Ditch in 1980. At that time, the City of Grand Junction sought and received a FLPMA Special Use Permit to extend the Bauer Ditch to a new point-of-diversion. The Bauer Ditch joins the Laurent Ditch on City property. The 1980 Special Use Permit appears to supersede the original easements for both ditches. There was no information on the original Bauer Ditch easement in BLM files. The Laurent Ditch headgate is on BLM property and the ditch crosses BLM and private property.

North Fork Diversion Pipeline to Purdy Mesa and Juniata Reservoirs

Status of Right-of-Way:	Right-of-Way Grant and Temporary Use Permit, December 15, 1986 (expires December 14, 2016)
Application for Right-of-Way Filed:	June 9, 1986
Federal Authority:	Act of October 21, 1976 (FLPMA)
File Number:	C-43080
Water Right Appropriation Date:	March 5, 1882 (Bolen Ditch #1) March 6, 1882 (Bolen Ditch #2)

	May 1, 1883 (Hentchel Ditch)
	May 1, 1885 (Seeger & Bedford Ditch)
	January 24, 1888 (Bauer Ditch)
	December 1, 1989 (City Ditch)
Decree Date:	July 25, 1888 (Bolen Ditch #1)
	July 25, 1888 (Bolen Ditch #2)
	July 25, 1888 (Hentchel Ditch)
	July 25, 1888 (Seeger & Bedford Ditch)
	July 25, 1888 (Bauer Ditch)
	October 28, 1993 (City Ditch)
Decree Amount:	1.4 cfs (Bolen Ditch #1)
	.90 cfs (Bolen Ditch #2)
	.95 cfs (Hentchel Ditch)
	5.76 cfs (Seeger & Bedford Ditch)
	1.96 cfs (Bauer Ditch)
	12.8 cfs absolute; 14.2 cfs conditional (City Ditch)

On December 15, 1986, the City of Grand Junction received a Right-of-Way and Temporary Use Permit from the Bureau of Land Management for a pipeline to transport water from the North Fork of Kannah Creek to Purdy Mesa and Juniata Reservoirs. The permit allowed the City "to construct, operate, maintain and terminate...an existing 18-inch pipeline to Purdy Mesa Reservoir, and a proposed 24 to 30-inch pipeline to Juniata Reservoir." The right-of-way is fifty feet wide and 400 feet long at the intake area narrowing to twenty feet wide and 2,240 feet long along the pipeline route. The permit covers a total of 1.49 acres, including the point of diversion. The North Fork Diversion Pipeline crosses BLM and City property. It was completed in 1989.

The pipeline carries water which was originally carried by the City Ditch. The City ditch carried water rights acquired during the Anderson purchase in 1955. The original City Ditch was built around 1970 and was lined with concrete, according to a water rights summary prepared for the City by Jim Dufford. The ditch, which could carry approximately 4.0 cfs, ran from the North Fork diversion to Purdy Mesa reservoir. In about 1980, the City placed aluminum pipe in the ditch to avoid problems with winter freezing and clogging. The capacity of the pipe was approximately 2.0 cfs. The 1986 right-of-way allowed the City to split the ditch so that water is carried to both Juniata and Purdy Mesa reservoirs. At this time, the entire ditch was replaced with pipeline designed to carry up to 30 cfs, an amount sufficient to allow the City to fully utilize its North Fork water rights. The Bolen #1, Bolen #2, Hentchel, Seeger and Bedford and Bauer ditches, which carried the water rights obtained during the Anderson acquisition have been abandoned.

Purdy Mesa Flowline

Status of Right-of-Way: Grant of Right-of-Way, February 15, 1957

Application for Right-of-Way Filed: August 9, 1955

Federal Authority: Act of February 15, 1901

File Number: C-011879

Water Right Appropriation Date: n/a

Decree Date: n/a

Decree Amount: n/a

The City of Grand Junction received a grant of right-of-way for the portion of the Purdy Mesa Pipeline which crosses BLM property on February 15, 1957. At that time, the pipeline was known as the Hallenbeck Water Supply Line. According to the original right-of-way decision, the right-of-way was granted under the Act of February 15, 1901. This document also stated that the right-of-way was approximately 3.17 miles long. In March 1962, the City provided proof of construction to the BLM and stated that "the City has in all things complied with the requirements of the Act of March 3, 1891, granting rights-of-way for (water pipelines, etc.) through the public lands of the United States" (parentheses in original). A 1989 BLM internal status sheet states that the easement was provided under the Act of March 3, 1891 and the Act of May 11, 1898. It also states that the right-of-way covers 1.3 miles of pipeline at a width of forty feet. The total acreage involved is stated to be 6.3 acres.

On April 22, 1957, the City's right-of-way was amended to note that the public lands traversed by the pipeline were under the jurisdiction of the Federal Power Commission, having been withdrawn in 1948 for the proposed Lower Whitewater Reservoir. The right-of-way was again amended on March 21, 1960 to clarify that the easement width was twenty feet on each side of the pipeline, or a total of forty feet. An additional amendment was issued on February 16, 1989 to allow hydropower development along the line. The proposed development did not take place. The pipeline takes water out of storage from Purdy Mesa Reservoir and transports it to the Grand Junction water plant.

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 High Line Ditch was approved by the State Engineer on January 11, 1921. The headgate for the ditch is on BLM property. The ditch crosses private property, BLM land and a small portion of USFS property.

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.

Kannah Creek High Line Ditch - Lander's Extension

Status of Right-of-Way:	Perpetual Easement, July 10, 1914
Application for Right-of-Way Filed:	November 8, 1913

Federal Authority:	Act of March 3, 1891; Act of May 11, 1898
File Number:	Montrose 08014
Water Right Appropriation Date:	n/a
Decree Date:	n/a
Decree Amount:	n/a
City's Interest in Decree:	n/a

On July 10, 1914, George Lander, Frank J. Lander, Lila M. O'Boyle, Georgia O'Boyle, John H. Herron and Minnie G. Herron received an easement for an approximately five mile extension of the Kannah Creek High Line Ditch. On June 18, 1914, a right-of-way consisting of "a strip of land twelve feet wide and 300 feet long for conveying water for irrigation purposes" was granted. The Lander's Extension of the High Line Ditch crosses USFS property in the "chained area."

OTHER FACILITIES IN WHICH THE CITY HAS AN INTEREST

Juniata Ditch

Status of Right-of-Way:	n/a
Application for Right-of-Way Filed:	n/a
Federal Authority:	n/a
File Number:	n/a
Water Right Appropriation Date:	January 1, 1884 (original) January 1, 1884 (domestic)
Decree Date:	July 25, 1888 (original) July 25, 1941 (domestic)
Decree Amount:	21.25 cfs (original) 2.00 cfs (domestic)
City's Interest in Decree:	.678 cfs

The Juniata Ditch is owned by the Juniata Ditch Company. The City of Grand Junction owns twelve shares of stock in the Company, or 2.4%, which were acquired

as part of the Click purchase in 1964. The Juniata Ditch was originally constructed along the same course as the present Juniata Ditch Enlarged. However, due to slide problems, the owners were unable to keep the ditch in working repair. Consequently, the original decree of 21.25 cfs is diverted through the headgate of the Kannah Creek High Line Ditch. The water is transported for about one mile in the High Line Ditch and then diverted into the Juniata Drop, a natural drain, and carried to the Juniata Ditch Enlarged. The additional decree of 5.0 cfs is diverted through the headgate of and transported in the Juniata Ditch Enlarged. The headgate for the Juniata Drop is on the Brouse property. The Juniata Ditch, the Juniata Ditch Enlarged and the Kannah Creek High Line Ditch are all located on City or private land. Therefore, there is no federal authorization for this ditch.

Juniata Ditch Enlarged

Status of Right-of-Way:	n/a
Application for Right-of-Way Filed:	n/a
Federal Authority:	n/a
File Number:	n/a
Water Right Appropriation Date:	September 1, 1939 (original) June 17, 1953 (conditional)
Decree Date:	July 25, 1941 (original) July 21, 1959 (conditional)
Decree Amount:	54.0 cfs (original) 75.00 cfs (conditional)
City's Interest in Decree:	39.0 cfs (original) 75.00 cfs (conditional)

The Juniata Ditch Enlarged has a right of 54.0 cfs. The decree states that 29.0 cfs is to be used to fill Purdy Mesa Reservoir, that not in excess of 20.0 cfs is to be used for direct flow irrigation and that the remaining 5.0 cfs represents water that the City provides to the Juniata Ditch for "carrying water." Of the 20.0 cfs dedicated to direct flow irrigation, 10.0 cfs is owned by the City of Grand Junction and the remaining 10.0 cfs is owned by other interests, according to a summary of the City's water rights prepared by Jim Dufford. In addition, the ditch also carries the 21.25 cfs awarded to the Juniata Ditch which flows in the Juniata Ditch Enlarged downstream of the Juniata Drop.

There is a conditional decree of 75.00 cfs which was awarded to C.V. Hallenbeck, W.J. Raber and Luther Crosswhite. This conditional right has a priority date of June 17, 1953. The use of this water was conditioned upon the timely completion of the enlargement of the Juniata Ditch Enlarged, then known as the Hallenbeck Ditch Enlarged, and the construction of the Juniata Reservoir Enlarged. The City now owns this entire right. The headgate for the Juniata Ditch Enlarged is on City property. The ditch crosses only private property for approximately one and one-quarter miles before connecting with the Juniata Ditch.

**Summary of Applicable Federal Statutes Granting
Rights-Of-Way For
Reservoirs and Diversion Facilities On Public Lands**

The City of Grand Junction's municipal reservoirs on United States Forest Service and Bureau of Land Management lands were authorized under five 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: Anderson #1; Anderson #2; Anderson #6; Bolen #1; Bolen,
Anderson & Jacobs #2; Flowing Park; Chambers; Deep Creek; Grand
Mesa #6; Grand Mesa #8**

Diversion Facilities:

**Bolen, Anderson & Jacobs Ditch and Bolen, Anderson & Jacobs Ditch
Enlarged; City By-Pass Ditch - B.A&J Ditch to Bolen Reservoir;
Grand Mesa Reservoir Company Ditch; Guild Ditch, Guild Ditch #1,
Guild Ditch #2; Kannah Creek High Line Ditch; Kannah Creek High
Line Ditch - Lander's Extension**

The Act of March 3, 1891 was amended by the Act of May 11, 1898. All of the City's 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 was 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: Raber-Click; Grand Mesa #9

Diversion Facilities:

Anderson Ditch; City By-Pass Ditch - Carson Lake

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.

Act of February 15, 1901 16 U.S.C. 79 and 16 U.S.C. 959

Diversion Facilities:

Kannah Creek Flowline; Purdy Mesa Flowline

The Act of February 15, 1901 provided rights-of-way through the "public lands, forest and other reservations of the United States" for "electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs, used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supply of water for domestic, public, or any other beneficial uses..."

Rights-of-way provided under this Act were limited to fifty feet on each side of the conduit. As the Act covered rights-of-way on a wide variety of public lands, including parks, forests, military installations and Indian reservations, approval was granted by the Secretary of the appropriate department. With regard to rights-of-way issued for lands under the jurisdiction of the Interior Department "any permission given by the Secretary of the Interior...may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to or over any public land, reservation, or park." This Act was repealed with the passage of FLPMA in 1976, however all valid, existing rights-of-way were grandfathered.

With regard to the Kannah Creek and Purdy Mesa Flowlines, BLM records indicate that the initial rights-of-way were granted under this Act. However, later records, including 1989 BLM file status sheets indicate that the facilities were granted perpetual easements under the Acts of March 3, 1891 and May 11, 1898. Easements granted under these Acts carry many more rights than rights-of-way granted under the Act of February 15, 1901. Most notably, the easements cannot be revoked at the discretion of the Secretary of the Interior. However, rights-of-way granted under the 1901 Act specifically authorize pipelines for domestic and public use of water.

Act of February 1, 1905 16 U.S.C. 524

Reservoirs: Carson Lake

This Act allowed citizens and corporations of the United States to receive grants of right-of-way for municipal, milling and mining purposes. The process for receiving an easement under this Act was self-executing. No application was required, although USFS regulations required an application for construction of a new facility. If a facility received a grant of right-of-way under another Act, a grant for municipal use was automatically granted under the Act of February 1, 1905 upon conversion from agricultural to municipal purposes. Thus, the City's reservoirs authorized by perpetual easements under a previous Act or Acts, may hold rights-of-way under the Act of February 1, 1905 as well.

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

Reservoirs: Somerville; Juniata

Diversion Facilities:

Bauer Ditch Enlarged; City Ditch - North Fork Pipeline to Purdy Mesa and Juniata Reservoirs; Laurent Ditch, Laurent Ditch Enlarged & Laurent Ditch Second Enlarged

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 City of Grand Junction's Grand Mesa Reservoirs and Diversion Facilities

Anderson Ditch

File No. 75212 April 28, 1908

Certificate of Adjudication filed March 10, 1908 in Book 119, Page 149

File No. 78129 September 12, 1908

Plat of R.T. Anderson Ditches 1, 2, 3 filed August 10, 1908

Anderson Reservoir #1

File No. 79481 November 21, 1908

Plat of Reservoir filed September 23, 1908

Anderson Reservoir #2

File No. 79480 November 21, 1908

Plat of Reservoir filed September 23, 1908

File No. 134958 January 2, 1917

Plat of Reservoir filed August 5, 1916

Bolen Reservoir #1

File No. 94846 October 29, 1910

Plat of Reservoir filed October 17, 1910

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

City Ditch - North Fork Pipeline to Purdy Mesa and Juniata Reservoirs

Ditch Plat Book #1, Number 12 - Seeger and Bedford Ditch

Ditch Plat filed on May 5, 1885

Statement filed in Book 14, Page 144

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 May 31, 1918 in Book 210, Page 179

Flowing Park Reservoir

File No. 66194 March 6, 1907

Statement for Flowing Park Reservoir #1 filed February 5, 1907

File No. 66195 March 6, 1907

Statement for Flowing Park Reservoir #2 filed February 5, 1907

File No. 67996 May 25, 1907

Plat of Reservoir filed May 8, 1907

Grand Mesa Reservoir Company Reservoirs & 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

Juniata Reservoir
June 16, 1890
Filing for Juniata Reservoir filed in Book 27, Page 173

May 27, 1893
Articles of Incorporation for Juniata Reservoir Company filed in Book 40, Page 177

File No. 84828 August 3, 1909
Plat for New Juniata Reservoir and New Ternahan Reservoir #2 filed June 1, 1909

File No. 90657 March 31, 1910
Plat for Elk Glen enlargement of Juniata Reservoir and Ternahan Reservoir filed March 11, 1910

Kannah Creek High Line Ditch Company
Ditch Plat Book #4, Number 16
Ditch Plat filed on August 30, 1904

File No. 75448 May 7, 1908
Certificate of Incorporation filed March 21, 1908

Laurent Ditch
Ditch Plat Book #4, Number 23
Ditch Plat filed on May 8, 1904

Purdy Mesa Reservoir

File No. 84828 August 3, 1909

Plat for New Juniata Reservoir and New Ternahan Reservoir #2 filed June 1, 1909

File No. 90657 March 31, 1910

Plat for Elk Glen enlargement of Juniata Reservoir and Ternahan Reservoir filed March 11, 1910