



*“Voice of the Western Slope since 1953”*  
*A coalition of counties, communities, businesses & individuals*

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**99-9 WA 3**  
**Ditch Bill, Implementation of**

**WHEREAS:** Many of Colorado's water supply facilities are located on, or transported across, federal lands, and

**WHEREAS:** The Ditch Bill, a 1986 amendment to the Federal Land Policy Management Act (FLPMA) (43 U.S.C. Section 1761 (c)), provided agricultural water users with the option of accepting a permanent easement from the Forest Service for certain ditches, reservoirs or other facilities constructed on Forest Lands, and

**WHEREAS:** The Ditch Bill applied to all structures in existence prior to the effective date of FLPMA, October 21, 1976 and was passed to give agricultural water users the opportunity to avoid a process that was increasingly seeking to attach on them burdensome terms, conditions and fees, and

**WHEREAS:** Many water users have expressed real concerns over the broad language included in the Ditch Bill easement form used by the Forest Service. These concerns take three primary forms:

- (1) the Forest Service may try to use Ditch Bill easements to impose bypass flow requirements;
- (2) the Forest Service may try to exercise a "veto" on routine operations and maintenance plans on existing facilities, and
- (3) the agency may impose NEPA, ESA or even CWA conditions on the operation and maintenance of facilities, and

**WHEREAS:** Other issues such as road closures, width of the easement or grant, operations and maintenance, multiple ownership's, or emergency repairs and modifications pose threats to water users around the State. Besides affecting property rights and state water law, there is a significant public safety issue with the maintenance of all ditches and reservoirs on Forest Service lands that could lead to property damage and even loss of lives, and

**WHEREAS:** Many State officials and water users are very frustrated at the level of respect and attention federal agencies pay to State laws, the doctrine of prior appropriation and the administration of Colorado's water rights, and

**WHEREAS:** The legislative history of the Ditch Bill contains assurances that the Forest Service will not diminish the entitlements of rights-of-way holders under existing grants, and the U.S. Department of Agriculture has committed to address these necessary changes to the Ditch Bill in its legislative history,

**NOW, THEREFORE BE IT RESOLVED** that CLUB 20 supports the following changes be made in the implementation of the Ditch Bill:

All easements or grants that pre-date the creation of the National Forest and federal environmental laws should be grandfathered and not subject to Forest Service terms and conditions. And now is the time to secure commitments to address these issues from the Forest Service in clear and simple terms;

The Forest Service should include existing water supply facilities in the environmental baseline such that they are not subject to new requirements;

It is time to demand that the Forest Service once again consider water a primary purpose of the National Forests;

- Bypass flows and federal water rights are direct threats to property rights, Colorado law and the prior appropriation doctrine, and the Forest Service has a responsibility to recognize these rights of Colorado water users;
- The State of Colorado should seek clarification of these issues either in the Ditch Bill easements themselves, or through Congressional legislation, and should include regional/local needs and the sanctity of Colorado water rights;
- Failing clarification through Congressional action, the State of Colorado may want to consider litigation on behalf of Colorado's water users.

**Adopted September 10, 1999**