

these individuals for teleconference information. For further information on RAC history, operations, and the application process, a Web site is available at <http://www.fs.fed.us/r10/ro/payments>.

**SUPPLEMENTARY INFORMATION:** This meeting will focus on the discussion and potential recommendation for funding of the costs of the publication and distribution of a RAC newsletter and/or the commitment of RAC funds to support miscellaneous administrative functions. The meeting is open to the public. Teleconference capability is available (committee members from outside of Petersburg will participate via teleconference).

Dated: June 23, 2004.

**Forrest Cole,**

*Forest Supervisor.*

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**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Evaluating Applications and Issuing Easements for Certain Water Development Facilities on National Forest System Lands That Qualify Under the Act of October 27, 1986**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of agency interim directive.

**SUMMARY:** The Forest Service is issuing an interim directive to guide its employees in evaluating applications and issuing permanent easements for certain water development facilities on National Forest System lands that qualify under the Act of October 27, 1986 (also known as the "Colorado Ditch Bill"). The interim directive supplements internal agency direction in Forest Service Manual chapter 2720 to provide clarity and specificity in agency policy in order to process applications and issue permanent easements authorized under the Colorado Ditch Bill in a consistent and efficient manner.

**DATES:** This interim directive is effective July 30, 2004.

**ADDRESSES:** This interim directive (ID 2720-2004-1) is available electronically from the Forest Service via the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>. Single paper copies of the ID are also available by contacting Robert Cunningham, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250-1124 (telephone 202-205-2494).

**FOR FURTHER INFORMATION CONTACT:** Robert Cunningham, Lands Staff (202-205-2494).

**SUPPLEMENTARY INFORMATION:** The Forest Service is issuing an interim directive (ID) to Forest Service Manual (FSM) chapter 2720 to guide its employees in the review and evaluation of applications for easements for certain qualifying water development facilities on National Forest System (NFS) lands, and in the establishment of terms and conditions for inclusion in these easements. This interim directive to FSM 2720 is issued as ID number 2700-2004-1. The Act of October 27, 1986 (100 stat. 3047; commonly known as the "Colorado Ditch Bill"), amended Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1761) to authorize the Secretary of Agriculture to issue permanent easements without charge for certain water conveyance systems occupying NFS lands and used for agricultural irrigation or livestock watering purposes. Those easements have come to be known as "Ditch Bill easements." The Colorado Ditch Bill included certain criteria that must be met for applicants and their facilities to qualify for the issuance of a Ditch Bill easement.

The Colorado Ditch Bill did not prescribe the issuance of a specific easement to qualified applicants, nor did it prescribe the manner in which a permanent easement is to be conditioned. Rather, the Colorado Ditch Bill was enacted as an amendment to Title V of the FLPMA, which directs that all rights-of-way authorizations issued pursuant to FLPMA be conditioned in a manner that is consistent with applicable laws and regulations and adequately protects lands and resources. Therefore, while the issuance of a Ditch Bill easement in response to a qualified application is mandated in the statute, the manner in which the easement may be conditioned to comply with applicable State and Federal law is left to the discretion of the authorized officer. The Colorado Ditch Bill also did not exempt the processing of Ditch Bill easement applications from procedures required by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). In the case of qualified Ditch Bill easement applications, the discretionary Federal action consists of identifying terms and conditions that may be needed in the easement to comply with applicable State and Federal law. The procedures conducted pursuant to NEPA provide the basis upon which a

decision is made concerning those terms and conditions.

The Colorado Ditch Bill provided a window of just over 10 years within which entities could file an application for a Ditch Bill easement. That application window ended on December 31, 1996. The Forest Service received more than 2,500 applications for Ditch Bill easements, the bulk of which were submitted during the mid-1990s in the last several years of the 10-year application window. The Forest Service has issued approximately 600 easements in response to those applications. Approximately 1,800 applications remain unprocessed as Forest Service administrative units await the direction in this ID before they proceed in reviewing and processing those applications.

The decision to be made in reviewing and processing an application for a Ditch Bill easement is two-fold. First, the authorized officer must evaluate each application against the qualifying criteria established in the Colorado Ditch Bill. Second, those applications that meet all of the qualifying criteria are then further evaluated, pursuant to the provisions of NEPA, to determine the manner in which the easement may need to be conditioned to comply with other applicable laws and regulations.

In the late 1980s, internal agency policy was established to provide Forest Service officers with management direction in processing applications for and conditioning Ditch Bill easements. That policy was issued in the Forest Service Directive System FSM 2729. Minor revisions to that policy were made during the early and mid-1990s.

Beginning in the mid-1990s, as more and more western National Forests and their Ranger Districts started focusing on and responding to the large number of Ditch Bill easement applications they were receiving, internal questions started to emerge about existing policies and inconsistencies in applying agency policy and procedures to case-specific situations. The inconsistencies were in part attributable to the lack of understanding of the agency's limited discretion in responding to Ditch Bill easement applications, and inadequate agency direction at FSM 2729 concerning specific procedures to follow in evaluating applications, responding to assertions of outstanding rights that are included as part of a significant number of applications, evaluating the environmental effects of the ongoing operation and maintenance of qualifying facilities, and complying with the procedural requirements of laws such as NEPA and the Endangered Species Act of 1973 (ESA) (16 U.S.C.

1531 *et seq.*) in processing applications and conditioning easements. Compliance with the provisions of ESA is of particular concern in light of the fact that as many as half of the remaining applications may include facilities that occupy habitat of a listed species, pursuant to ESA. During the late 1990s the Forest Service also started to encounter inconsistencies in the procedures that authorized officers were using to identify and formally decide upon the terms and conditions to be included in a Ditch Bill easement.

The primary purposes of this ID are to (1) Supplement agency policy in a manner that provides greater clarity and understanding of the Forest Service's limited discretion in issuing easements for qualifying facilities, (2) identify specific options to consider and procedures to follow in complying with the provisions of the ESA, (3) ensure compliance with other existing laws and regulations governing these facilities and their use and occupancy of NFS lands, (4) recognize the rights of water users under State law, and (5) minimize impacts to the end use of water for agricultural irrigation and/or livestock watering purposes. The ID specifically:

1. Provides additional internal policy and procedures which direct the authorized officer to consult with Forest Service Water Rights and Boundary Management Specialists and, when needed, the Office of the General Counsel in evaluating evidence of a State-recognized water right and to ensure compliance with the qualifying criterion requiring the submittal of a recordable survey.

2. Establishes a series of water resources management policy statements for consideration in evaluating applications for and the conditioning of Ditch Bill easements that more clearly direct the authorized officer to recognize and respect the roles of the western States in appropriating and allocating water resources for beneficial uses and direct a greater degree of coordination and cooperation in seeking solutions to water needs and conflicts.

3. Provides clearer direction for requesting additional information from applicants when needed to evaluate the content of an application against the qualifying criteria.

4. Establishes procedures in responding to applicants who assert an outstanding statutory right to use and occupy NFS lands with their water development facility.

5. Provides additional direction to authorized officers when rejecting applications that do not qualify for a Ditch Bill easement.

6. Directs that all Ditch Bill easements include a provision that provide the authorized officer the authority to review and, if necessary, to modify or revise the terms and conditions of the Ditch Bill easement and/or an operation and maintenance plan that may be made a part of a Ditch Bill easement. Such a provision is required in existing Federal regulation for special use authorizations at 36 CFR 251.56(b)(1)(v). This provision shall not, as part of a periodic review of an easement's terms and conditions, authorize the Forest Service to administratively terminate or revoke the easement because the easement's permanency is granted by Federal law.

7. Provides more specific direction for complying with the provisions of NEPA and greatly expanded direction addressing procedures for complying with the requirements of ESA.

8. Provides direction for exploring a variety of approaches to meet the requirements of applicable Federal and State law in a manner that recognizes existing water rights and minimizes impacts to the applicant's end use of water for agricultural irrigation and/or livestock watering purposes.

9. Specifies that this ID does not prompt any revisions or replacements to Ditch Bill easements issued prior to the effective date of the ID and provides direction for addressing applications for and conditioning of Ditch Bill easements for water development facilities that are jointly used by others and that may already have been authorized by a Ditch Bill easement issued prior to the effective date of this ID.

Dated: June 24, 2004.

**Dale N. Bosworth,**  
Chief.

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**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Rehabilitation of Floodwater Retarding Structure Nos. 7 and 13A of the Upper Brushy Creek Watershed, Williamson County, TX

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural

Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure (FRS) Nos. 7 and 13A of the Upper Brushy Creek Watershed, Williamson County, Texas.

**FOR FURTHER INFORMATION CONTACT:** Dr. Larry D. Butler, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501-7682, telephone (254) 742-9800.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Dr. Larry D. Butler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure Nos. 7 and 13A to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the FRS will require the disturbance of 1.7 acres. FRS No. 7 will be rehabilitated by adding a 60-inch hooded inlet principal spillway and raising the dam height by 8 feet with a reinforced concrete parapet wall. The length of the dam will be extended 200 feet on the left abutment and 350 feet on the right abutment. FRS No. 13A will be rehabilitated by adding a 30-inch hooded inlet spillway and by raising the top of dam by 4 feet with a reinforced concrete parapet wall. The disturbed areas will be reestablished with bermudagrass. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Public Law 106-472). Total project costs is estimated to be \$4,201,400 of which \$2,956,100 will be paid from the Small Watershed Rehabilitation funds and \$1,245,300 from local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during