FINAL DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT
RIO GRANDE RESERVOIR LAND EXCHANGE
U.S. FOREST SERVICE
RIO GRANDE NATIONAL FOREST
DIVIDE RANGER DISTRICT
HINSDALE COUNTY, COLORADO

DECISION

Based upon my review of the Rio Grande Reservoir Land Exchange Environmental Assessment (EA), I have decided to implement Alternative 2, the proposed action, which entails an equal value exchange of federal lands for non-federal lands. Once the exchange is completed, the Forest Service will purchase additional non-federal lands and acquire a trail easement within the vicinity of Rio Grande Reservoir. Alternative 2 will be implemented with the following design criteria to minimize the impact to cultural resources:

- The Forest Service, Colorado State Historic Preservation Office (COSHPO) and San Luis Valley Irrigation District (SLIVD) entered into a Memorandum of Agreement (MOA) on June 15, 2015 which calls for a historic context document to be completed by Alpine Archaeological Consultants that will focus on the history and people involved in the construction phase of Rio Grande Reservoir (ca. 1908 to 1913).
- The historic context document will be completed prior to closing.

The proposed exchange and acquisition parcels are in Hinsdale County, adjacent to National Forest System Road (NFSR) 520, approximately 20 miles west of Creede, Colorado. The exchange will convey the federal lands underlying the Rio Grande Reservoir dam, as well as the lands on which future dam upgrades would be located, providing SLIVD with long-term access to the dam and rehabilitation site. In exchange, the Forest Service would acquire non-federal lands on which Forest Service infrastructure was constructed at the Thirty-mile Campground. Upon completion of the exchange, the Forest Service would acquire two inholdings within the Weminuche Wilderness and a permanent trail easement on the portion of the Weminuche Trail, National Forest System Trail (NFST) 818, that crosses non-federal lands. Tables 1 and 2 summarize the parcels exchanged and acquired under the Proposed Action.
Table 1. Equal value land-for-land exchange parcels

<table>
<thead>
<tr>
<th>Parcel No.</th>
<th>Acres</th>
<th>Ownership</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6.15</td>
<td>Federal</td>
<td>Lot 5, Sec. 13, T. 40 N., R. 4 W., N.M.P.M.</td>
</tr>
<tr>
<td>A1</td>
<td>3.89</td>
<td>Non-federal</td>
<td>Lot 3, Sec. 13, T. 40 N., R. 4 W., N.M.P.M.</td>
</tr>
<tr>
<td>A2</td>
<td>4.12</td>
<td>Non-federal</td>
<td>Lot 2 (portion outside Weminuche Wilderness), Sec. 13, T. 40 N., R. 4 W., N.M.P.M.</td>
</tr>
</tbody>
</table>

Table 2. Additional non-federal parcels proposed for acquisition by the United States on completion of land exchange

<table>
<thead>
<tr>
<th>Parcel No.</th>
<th>Acquisition Method</th>
<th>Acres</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>D1</td>
<td>Purchase ($1)</td>
<td>11.58</td>
<td>Lots 2, 4 (portions within Weminuche Wilderness), Sec. 13, T. 40 N., R. 4 W., N.M.P.M.</td>
</tr>
<tr>
<td>D2</td>
<td>Purchase ($1)</td>
<td>12.24</td>
<td>N1/2SE1/4SE1/4 Sec. 14 (portion within Weminuche Wilderness), T. 40 N., R. 4 W., N.M.P.M.</td>
</tr>
<tr>
<td>NFST 818</td>
<td>Easement</td>
<td>0.65</td>
<td>Sections of existing trail totaling 1,402 feet outside of the Weminuche Wilderness within Lot 4 Sec. 13 and N1/2SE1/4SE1/4 Sec. 14, T. 40 N., R. 4 W., N.M.P.M.</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>24.47</td>
<td></td>
</tr>
</tbody>
</table>

Mineral rights will be exchanged with both the federal and non-federal parcels. The federal parcel will be conveyed to the non-federal party by Patent issued by the Bureau of Land Management. The non-federal parcel will be conveyed to the United States of America by general warranty deed.

Outstanding interests and reservations

This decision is made subject to the following outstanding interests and reservations on the federal and non-federal exchange parcels.

Federal exchange parcel

Reservations

- Reserving to the United States a right-of-way thereon for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).
- Reserving to the United States and its permittees, contractors, and assigns, a perpetual 20-foot wide public access easement along the Weminuche Trail (NFST 818). Survey of the trail segment to be reserved shall be provided by the non-federal party. The said easement hereby reserved is for the construction, reconstruction, maintenance, and full, free, and quiet use and enjoyment of a trail or as it shall be located and constructed over and across the above described premises. The foregoing reservation is in accordance with the provisions of the Act of February 28, 1925 (16 U.S.C. 486).
Outstanding rights
None

Other
- A single-pole overhead power line owned by the San Luis Valley Rural Electric Cooperative follows the southeast boundary of the parcel for approximately 350 feet. This power line provides service to, and ends at, the dam’s gate house and caretaker residence. A perpetual easement shall be negotiated between the non-federal party and San Luis Valley Rural Electric Cooperative, executed and recorded at closing.
- There is one withdrawal affecting the parcel. Public Land Order 1510 dated 9-24-1957 withdrew the 293.19-acre Thirty Mile Recreation Area within the Rio Grande National Forest for use of the Forest Service, Department of Agriculture, as a recreation area and campground. Under and pursuant to the authority vested in the President by the Act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952. This withdrawal will need to be partially revoked prior to closing of the exchange.

Non-federal exchange parcels
Reservations
None

Outstanding Rights and Exceptions to Title
Westcor Land Title Insurance Company Commitment, Order No. 13556 dated October 16, 2014.
- Memorandum of Agreement between the State of Colorado, acting by and through the Department of Natural Resources for the use and benefit of the Wildlife Commission and the San Luis Valley Irrigation District dated March 26, 2004, and recorded December 2, 2004, under Reception No. 94217 of the Hinsdale County, Colorado, records. This exception relates to the reregulation of the Commission's water rights in Rio Grande Reservoir and does not affect the non-Federal parcels. It will be removed from the final policy.
- Agreement between the San Luis Valley Irrigation District and the San Luis Valley Water Conservancy District dated December 12, 2001, and recorded August 12, 2003, under Reception No. 93134 of the Hinsdale County, Colorado, records. This exception relates to the reregulation of the Conservancy District's water rights in Rio Grande Reservoir and does not affect the non-Federal parcels. It will be removed from the final policy.
- Warranty Deed between the San Luis Valley Irrigation District and the Colorado Water Conservation Board dated October 5, 1988, and recorded October 24, 1988, in Book 129 at Page 472 of the Hinsdale County, Colorado, records. This exception to title as it relates to property which is appurtenant to and used in conjunction with the Rio Grande Reservoir structure including brass seals, concrete, access road, rock fill, riprap, observation wells, Parshall flumes, radio equipment, and inclinometer holes and does not affect the non-Federal parcels. It will be removed after a survey of the
non-Federal parcels which provides legal descriptions is completed.

- Right of Way Deed from San Luis Valley Irrigation District to the United States of America dated August 1, 1961 and recorded August 7, 1961, in Book 55 at Page 529 of the Hinsdale, Colorado records for the 30 Mile Campground Road. This exception will merge with title upon conveyance to the USA.
- Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. This exception will merge with title upon conveyance to the USA.

**Statement of approximate equal value**

In accordance with the FLPMA Section 206(h), 36 CFR 254.11, FSM 5410.3(9)(d), and FSH 5409.13(33.51), a Statement of Approximate Equal Value was completed by the Forest. The Federal land was first determined to be valued less than the $150,000 threshold and then the Federal and non-Federal lands were determined to be substantially similar in location, acreage, and physical attributes.

**DECISION RATIONALE**

I decided to implement Alternative 2 based on the purpose and need, its ability to address the identified issues, and its benefit to the public’s interest. The Rio Grande Reservoir Land Exchange EA documents the environmental analysis and conclusions upon which this decision is based.

**Purpose and need**

The purpose of the proposed land exchange is to provide the San Luis Valley Irrigation District (SLVID) long-term access to complete current and future rehabilitation, operation, and maintenance of the Rio Grande Reservoir dam in the manner most in the public interest. The need for the proposed action arises from existing encroachment issues, impending dam repairs on National Forest System (NFS) lands, and the opportunity for the Forest Service to act in the public interest.

- Alternative 1 does not meet the purpose and need.
- Alternative 2 addresses all elements of the purpose and need.
- Alternative 3 addresses SLVID access to the dam in order to complete current and future rehabilitation and resolves existing encroachments on NFS lands but does not maximize public interest.
Ability to address identified issues
Scoping efforts both with the public and with RGNF staff identified several issues. Two key issues surfaced and led to the generation of design criteria and an additional alternative. Seven additional issues were identified and studied in detail in the EA.

Key Issues:
Cultural resources: The exchange would result in the conveyance of portions of two eligible historic properties on the federal parcel to SLVID. This issue led to the addition of the design criteria identified in the "Decision" section.

Land tenure: Conveyance of the federal parcel to SLVID would result in loss of federal jurisdiction over lands proposed for development. This issue led to the development of Alternative 3, the permit option.

Issues analyzed in the EA:
Water Resources: Dam rehabilitation has the potential to affect downstream water quality and water quantity.

Recreation and Public Access: The exchange will affect recreation and public access within the exchanged lands.

Wilderness: The exchange will affect the area of the Weminuche Wilderness Area under federal ownership.

Public Safety: Without dam rehabilitation, public safety may be at risk.

Socioeconomics: Without dam rehabilitation, downstream economies may be impacted.

Special Status Species: The exchange and subsequent dam rehabilitation have the potential to affect special status species, and the management of those species, within the action area.

Wetlands and Floodplains: The land exchange will result in the conveyance of wetlands and floodplains under the jurisdiction of Executive Orders (E.O.) 11988 and 11990.

Minerals: Potentially developable minerals may be conveyed in the exchange.

Alternative comparison
Table 4 in the EA (p. 14-16) compares the three alternatives analyzed in detail based on the two key issues and seven additional ones. In summary, Alternative 1 (no action) maintains the existing condition.

Alternative 2 (proposed action), will have no negative impacts to water resources, special status species, or minerals. The proposed action will improve recreation and public access, public safety, socio-economics; it will reduce private inholdings within the Weminuche Wilderness and will increase the acreage of wetlands under federal jurisdiction. After mitigation as specified in
the MOA, the proposed action will not negatively impact cultural resources. Federal jurisdiction over lands proposed for development will be retained because dam rehabilitation will need to comply with the Clean Water Act (US Army Corps of Engineers' jurisdiction).

Alternative 3 (permit option), will have no negative impacts to water resources and special status species. It will maintain the existing condition in land tenure, cultural resources, recreation and public access, wilderness, wetlands and floodplains, and minerals. Alternative 3 will improve public safety and socio-economics.

**Public interest determination**

Land exchanges may only proceed after a determination is made that the public interest will be well served. 36 CFR 254.3(b)(1) requires consideration of the elements listed in Table 3 when determining the public interest. Table 3 compares the three alternatives based on their ability to benefit the public's interest.
Findings required by 36 CFR 254.3(b)(2)

The resource values and public objectives served by the 32.48 acres of SLVID land — which include the public access easement on the Weminuche Trail, land within the Thirty-mile Campground, 1.26 acres of wetlands, and 23.82 acres within the Weminuche Wilderness — at least equals, if not exceeds, the resource and public objectives served by the 6.15 acres of federal land to be conveyed.

The federal lands to be conveyed are currently encumbered by the downstream toe of the Rio Grande Reservoir dam (dam face and the outlet tunnel portal) and the existing access road to the toe of the dam and outlet portal. SLVID intends to use the conveyed federal land in its current manner: for dam rehabilitation, operation, and maintenance. This use has not conflicted substantially with established management objectives on adjacent federal land while the land was under Forest Service ownership; conveyance will not increase conflict.
### Table 3: Comparison of Alternatives Based on Public Interest Factor

<table>
<thead>
<tr>
<th>Public Interest Factor to Consider (36 CFR 254.3(b)(1))</th>
<th>Alternative 1: No Action</th>
<th>Alternative 2: Proposed Action</th>
<th>Alternative 3: Permit Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunity to achieve better management of Federal lands and resources</td>
<td>Maintains status quo</td>
<td>Consolidates private inholdings into federal ownership which facilitates boundary management. Addition to NFS ensures public access in the long term.</td>
<td>Maintains status quo</td>
</tr>
<tr>
<td>Meet the needs of State and local residents and their economies</td>
<td>Inaction to rehabilitate the dam could reduce the ability of SLVID to meet user demand which could impact the agricultural economy.</td>
<td>Dam rehabilitation would ensure the continued delivery of water to users which supports employment in downstream communities.</td>
<td>Same as Alternative 2</td>
</tr>
<tr>
<td>Secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values;</td>
<td>Maintains status quo</td>
<td>Increases federal ownership under Forest Service management by a net 26.33 acres. RGNF will acquire: - Portions of two eligible historic sites. Adverse effects to remaining portions are mitigated through the MOA  - 1.26 acres of wetlands  - 23.82 acres within Weminuche Wilderness; these will be managed as wilderness</td>
<td>Same as Alternative 1</td>
</tr>
<tr>
<td>Enhancement of recreation opportunities and public access</td>
<td>Maintains status quo</td>
<td>Permanent public access along the Weminuche Trail secured through easement. RGNF acquisition of land within the Thirty-mile Campground. Addition to NFS ensures public access in the long term.</td>
<td>Same as Alternative 1</td>
</tr>
<tr>
<td>Consolidation of lands and/or interest in lands (...) for more logical and efficient management and development</td>
<td>Maintains status quo</td>
<td>Consolidates private inholdings into federal ownership which facilitates boundary management.</td>
<td>Same as Alternative 1</td>
</tr>
<tr>
<td>Consolidation of split estates</td>
<td>Maintains status quo</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Expansion of communities</td>
<td>Maintains status quo</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Accommodation of existing or planned land use authorizations</td>
<td>Maintains status quo</td>
<td>There are no existing authorizations. Planned authorizations would not be necessary as activities would occur on private land.</td>
<td>There are no existing authorizations. Planned authorizations would be accommodated through individual permits.</td>
</tr>
<tr>
<td>Promotion of multiple-use values</td>
<td>Maintains status quo</td>
<td>Increase in NFS would promote multiple-use values.</td>
<td>Same as Alternative 1.</td>
</tr>
<tr>
<td>Fulfillment of public needs</td>
<td>Maintains status quo</td>
<td>Meets need to rehabilitate dam, increases land under federal ownership, and improves public access</td>
<td>Meets need to rehabilitate dam</td>
</tr>
</tbody>
</table>
PUBLIC INVOLVEMENT

This action was originally listed as a proposal on the Rio Grande National Forest Schedule of Proposed Actions and updated periodically during the analysis. People were invited to review and comment on the proposal through a scoping letter mailed to interested governments, agencies, organizations and tribes, and through publication of a notice in the Valley Courier and Silver World newspapers. A complete listing of contacts made, the scoping letters, and a summary of comments and responses can be found in the project file at the Divide Ranger District, Del Norte, CO.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

This decision is consistent with the Rio Grande National Forest Land Management Plan. The project was designed in conformance with Forest Plan forest-wide management direction and goals as summarized in Appendix C of the final EA (Forest Plan Compliance Review).

A Finding of No Significant Impact (FONSI) and EA were considered. I determined these actions will not have a significant effect on the quality of the human environment, and an Environmental Impact Statement (EIS) will not be prepared.

The following federal laws have specific application to this proposed action and have been addressed to insure compliance. Further information can be found in the final EA and in the resource specific reports prepared for the EA, as indicated.

- Clean Water Act (EA - Water Quality and Quantity)
- Comprehensive Environmental Response, Compensation, and Liability Act (Phase 1 Environmental Site Assessment)
- Endangered Species Act (Biological Assessment and Evaluation Short Form; Biological Assessment / Biological Evaluation for Plants)
- Executive Order 11988 - Floodplain Management (Wetland and Floodplain Evaluation)
- Executive Order 11990 - Protection of Wetlands (Wetland and Floodplain Evaluation)
- Executive Order 13186—Migratory Birds (Migratory Bird Analysis and Report)
- General Mining Act of 1872 (Mineral Report)
- National Historic Preservation Act of 1966 (EA – Cultural Resources)
- Wilderness Act (EA – Wilderness)
FINDING OF NO SIGNIFICANT IMPACT

The significance of environmental impacts must be considered in terms of context and intensity. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human and national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. In the case of a site-specific action, significance usually depends upon the effects in the locale rather than in the world as a whole. Intensity refers to the severity or degree of impact. (40 CFR 1508.27)

CONTEXT

For this land exchange the context of the environmental effects is based on the environmental analysis in the EA. Land exchanges convey land, interest in land, and resources associated with them. However, the act of conveyance has no direct environmental effects. Therefore, the environmental analysis focused primarily on future use and management of lands acquired and conveyed and the effect of the exchange on lands that adjoin them. The lands conveyed are in Hinsdale County in the vicinity of Rio Grande Reservoir. Implications of the exchange are primarily local to the project area, the Rio Grande River downstream of the project area, and communities and agriculture of the San Luis Valley in Colorado. Some of the lands acquired are within an area of national interest, the Weminuche Wilderness; however, the lands acquired will be protected from development.

INTENSITY

The intensity of effects was considered in terms of the following:

1. Impacts may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that, on balance, the effect will be beneficial. Consideration of the intensity of environmental effects is not biased by beneficial effects of the action.

2. The degree to which the proposed action affects public health or safety. There will be no negative effect on public health and safety because dam rehabilitation would improve the existing ability of the dam to attenuate flooding and would allow for continued safe operation of the dam (See EA pages 32-34). No concerns regarding hazardous materials were revealed in the Phase 1 Environmental Site Assessment (project record).

3. Unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. There are historic resources, wetlands, and designated wilderness within the project area. The anticipated impacts to historic resources would be sufficiently mitigated by the MOA with COSHPO and SLVID. There would be a gain in
wetlands. Acquired lands include inholdings within a designated wilderness area that are desirable to meet management goals (See EA pages 19-22, 31-32, and 39-41).

4. **The degree to which the effects on the quality of the human environment are likely to be highly controversial.** The effects on the quality of the human environment are not likely to be highly controversial. There is no known credible scientific controversy over the impacts of the proposed action. The proposed land transaction itself is similar to numerous transactions the Forest Service has administered. Dam rehabilitation activities are consistent with common construction activities and water projects of similar scope.

5. **The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.** The Forest Service has undertaken numerous similar actions. The analysis shows the effects are not uncertain, and do not involve unique or unknown risk (See EA Chapter III)

6. **The degree to which the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration.** The action is not likely to establish a precedent for future actions with significant effects. Neither the land exchange nor this decision will set a precedent. Similar exchanges have occurred in the past, nationally and locally. They are completed by the Forest Service and by other public land management agencies. Each exchange is evaluated on a case-by-case basis and on its own individual merits.

7. **Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.** The EA evaluates the land exchange in the context of past, present, and potential future actions that could lead to cumulative impacts, and no significant impacts were identified (See EA Chapter III).

8. **The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed, or eligible for listing, in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.** The land exchange will result in historic properties associated with the construction of Rio Grande Reservoir being transferred out of federal ownership. Loss of these properties will be mitigated through the creation of a Historical Context Document as specified by the MOA signed by the RGNF, SLVID, and COSHPO on June 15, 2015 (See EA pages 19-22).

9. **The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.** The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species act of 1973. Evaluation of the potential impacts to listed species or critical habitat has resulted in the determination that the proposed action is not likely to adversely affect any listed species or designated critical habitat (See EA pages 35-38;
Biological Assessment and Evaluation Short Form, Biological Assessment / Biological Evaluation for Plants [project record]).

10. Whether the action threatens to violate Federal, State, or local law or requirements imposed for the protection of the environment. The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA (see EA pages 5-7). The action is consistent with the Rio Grande National Forest Land and Resource Management Plan as detailed in Appendix C of the EA (Forest Plan Compliance Review).

After considering the effects of the actions analyzed, in terms of context and intensity, I have determined that these actions will not have a significant effect on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

OBJECTION OPPORTUNITIES

This decision was subject to objection pursuant to 36 CFR 218, and a legal notice of the opportunity to object was published on October 14, 2015, in the Valley Courier, the Rio Grande National Forest newspaper of record, and sent to those who provided comments during the project’s development. One objection was filed and processed by the objection reviewing officer. A final response to the objector was provided by the reviewing officer on February 11, 2016. The response concluded that there were no violations of law, regulation, or policy and that no changes to the analysis documents were needed. In addition, the response instructed the deciding official, the Rio Grande National Forest Supervisor, to proceed with the issuance of the final decision document.

IMPLEMENTATION DATE

This decision may be implemented any time after the date of signature.

CONTACT

For additional information concerning this decision, contact:

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02/23/2014