

**U.S. Department of the Interior
Bureau of Land Management**

**Categorical Exclusion
Lester-Attebury Diversion Reconstruction**

BLM

PREPARING OFFICE

U.S. Department of the Interior
Bureau of Land Management



Categorical Exclusion

Lester-Attebury Diversion Reconstruction

DOI-BLM-CO-F020-2015-0049CX

Prepared by
U.S. Department of the Interior
Bureau of Land Management
Royal Gorge Field Office
Canon City, CO

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A. Background

BLM Office:

Royal Gorge Field Office — LLCOF02000

Lease/Serial/Case File No.:

N/A

Proposed Action Title/Type:

Lester-Attebury Diversion Reconstruction/Maintenance

Location of Proposed Action:

T19S. R69W S14 SE

The project is located approximately 0.2 miles upstream from the Colorado Highway 115 bridge, 2 miles east of Florence, Colorado.

Applicant:

BLM

Description of Proposed Action:

The Proposed Action is to reconstruct the existing Lester-Attebury diversion structure on the Arkansas River to maintain BLM water rights associated with the Blue Heron Property.

The foremost objective of this project is to reconstruct the diversion so that the water rights associated with the Lester-Attebury ditch can be fully exercised and maintenance is minimized. Secondary objectives are to improve public safety and recreational opportunities while improving fish passage/habitat. The resulting downstream flows from the diversion will decrease bank erosion and help stabilize the channel.

In addition to not functioning adequately for diversion purposes, the current diversion is a public safety hazard, hinders fish passage, and constant maintenance has a negative effect on water quality. There are several diversion structures of similar nature to the Lester-Attebury in the area that have been identified for reconstruction for recreational purposes by the community. It is envisioned that this project be an example that can be shown to other ditches in the area on how diversions like this can be rebuilt and benefit both ditch owners and the public.

This action is exempt from the 404 permitting requirements because it involves maintenance of an existing irrigation ditch; however, the activity will still try to incorporate portions of the regulation such as fueling away from the river, special hydraulic fluids, etc.

Background:

The Blue Heron property was purchased in the year 2000 using Land and Water Conservation Funds for recreation and wildlife purposes. A key feature of the property is two historic gravel pits that provide pond habitat that is limited in the watershed. The ponds support one of the only warm water fisheries in the Upper Arkansas River watershed and provide unique wetland habitat

with fluctuating shoreline. Water in these ponds is diverted from the Arkansas River as decreed by Colorado Water Court as part of the Substitute Water Supply Plan (SWSP) for the ponds. When the property was purchased, excess water rights above what is required for the SWSP were also acquired. This excess water right, along with other BLM water, is transferred through partnerships to DeWeese Reservoir for improved management of flows in Grape Creek for fishery benefit. Grape Creek is an important creek in the area and flows through two wilderness study areas and an ACEC. This creek suffers from water management that can dry the creek in the winter months negatively impacting the fishery. In cooperation with the Upper Arkansas Water Conservancy District and the DeWeese-Dye Ditch Company, excess BLM water from Blue Heron is released during the critical winter low flow period to keep enough flow in the creek to maintain the fishery. Attachment 1 shows the location of the Blue Heron Property, Attachment 2 shows the Lester-Attebury Diversion and Attachment 3 shows the current condition of the diversion.

The water management infrastructure associated with the property was in very poor condition when the property was purchased. Due to the age and condition of much of the infrastructure, it is difficult to divert enough water to satisfy the SWSP. Because the water transfer hinges on there being excess water, if BLM does not divert enough to satisfy the SWSP there can be no water transferred to Deweese Reservoir. Beginning in 2004, the transfers began; however not enough water was being diverted. Since making the tranfers, BLM and Colorado Parks and Wildlife have documented substantial improvement in the fishery. Up until now, the State has allowed the transfer even though not enough water has been diverted. 2014 was the first year since BLM acquired the property that enough water was actually diverted. This was largely due to a major rebuilding of the headgate in the spring coupled with a high water year. Even though enough water was diverted in 2014, at lower flows frequently seen, the diversion does not function properly to deliver water to the headgate. The last major piece of the water infrastructure that needs to be completed is replacing the diversion with one that functions properly.

BLM is a part owner in the Lester-Attebury Ditch and shares management with other water rights holders. The water rights associated with the ditch are some of the most senior in the area with appropriation dates between 1875 and 1877; therefore the ability to divert at very low flows (200cfs) in the Arkansas is necessary. The total amount decreed for the ditch is 9.1 cfs. This project will replace the antiquated 1870's era diversion dam across the Arkansas River with a new diversion.

In addition to the Blue Heron Ponds and BLM lands north of the river, the south bank of the Arkansas River at this location is the Florence River Park. This park is one of the few access points to the lower river and receives heavy recreational use for fishing, boating and other river related activities. The improvement of recreational opportunities at this park is a priority for the local community.

B. Land Use Plan Conformance

Land Use Plan Name:

Name of Plan: Royal Gorge Resource Management Plan

Date Approved: May 1996

Decision Number: C-5, C-14

Decision Language: Water rights will be acquired, in compliance with state law, in support of BLM programs, Emphasis will be to continue all watershed activities that provide protection, maintenance, and enhancement of watershed values.

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with:

516 DM 2, Appendix 1, 1.7 — Routine and continuing government business, including such things as operations, maintenance, renovations, and replacement activities having limited context and intensity.

and

16 DM 11.9, A.2– Minor modification of water developments to improve or facilitate wildlife use.

and

16 DM 11.9, J.10– Removal of structures and materials of no historical value when little surface disturbance is involved.

These categorical exclusions are appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply.

CATEGORICAL EXCLUSION REVIEW: This proposed action is listed as a Categorical Exclusion in DOI Departmental Manual Part 516 Chapter 11. None of the following exceptions in 516 DM 2, Appendix 2, apply.

Table 1.1. Exclusion Criteria

| Exclusion Criteria | YES | NO |
|---|-----|----|
| 1. Have significant impacts on public health or safety. | | X |
| 2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; lands with wilderness characteristics; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas. | | X |
| 3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources. | | X |
| 4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. | | X |
| 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. | | X |
| 6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. | | X |
| 7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office. | | X |

| Exclusion Criteria | YES | NO |
|--|------------|-----------|
| 8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species. | | X |
| 9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment. | | X |
| 10. Have a disproportionately high and adverse effect on low income or minority populations. | | X |
| 11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites. | | X |
| 12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species. | | X |

Table 1.2. Interdisciplinary Team Review

| INTERDISCIPLINARY TEAM REVIEW | | | |
|--------------------------------------|----------------------------|---|--------------------------|
| NAME | TITLE | AREA OF RESPONSIBILITY | Initials/date |
| Lara Duran | Wildlife Biologist | Terrestrial Wildlife, T&E, Migratory Birds | LD, 7/13/15 see analysis |
| John Lamman | Range Management Spec. | Range, Vegetation, Farmland, Weeds | JL, 5/8/2015 |
| Dave Gilbert | Fisheries Biologist | Aquatic Wildlife, Riparian/Wetlands | DG, 5/8/15 |
| Melissa Smeins | Geologist | Minerals, Paleontology, Waste Hazardous or Solid | MJS, 6/5/2015 |
| John Smeins | Hydrologist | Hydrology, Water Quality/Rights, Soils | JS, 4/21/15 |
| Ty Webb | Prescribed Fire Specialist | Air Quality | TW, 9/14/15 |
| Dave Parker | Cadastral Surveyor | Cadastral Survey | |
| Linda Skinner | Outdoor Recreation Planner | Recreation, Wilderness, LWCs, Visual, ACEC, W&S Rivers, | LS, 4/27/2015 |
| John Nahomenuk | River Manager | Recreation, Wilderness, LWCs, Visual, ACEC, W&S Rivers | N/A |
| Ken Reed | Forester | Forestry | KR, 4/28/2015 |
| Monica Weimer | Archaeologist | Cultural, Native American | NA |
| Michael Troyer | Archaeologist | Cultural, Native American | MDT, 4/28/2015 |
| Rich Rotte | Realty Specialist | Realty | RAR, 4/28/15 |
| Steve Cunningham | Law Enforcement Ranger | Law Enforcement | N/A |
| Ty Webb | Fire Management Officer | Fire | N/A |

REMARKS:

Cultural Resources: Although cultural resources were found near the area of potential effect, and the diversion dam itself is historic [see report CR-RG-13-129 (P)], the resources are not eligible for inclusion on the National Register of Historic Places (NRHP). Therefore, the proposed project will have no impact on any historic properties (those eligible for the NRHP).

Native American Religious Concerns: No possible traditional cultural properties were located during the cultural resources inventory (see above). There is no other known evidence that suggests the project area holds special significance for Native Americans.

Threatened, Endangered and Proposed Species: According to the US Fish and Wildlife Service, there are three federally threatened, endangered and proposed species are known or believed to occur in the planning area in Fremont County.

Since suitable habitat for Mexican spotted owl, black-footed ferret, and Canada lynx does not occur in the action area, there would be NO EFFECT to Mexican spotted owl, black-footed ferret, or Canada lynx from the Lester Attebury Diversion Dam project. There are no other federally listed threatened, endangered or proposed species that have suitable habitat within ¼ mile of the action area and there would NO EFFECT on any other federally listed threatened, endangered or proposed species. Section 7 consultation is not necessary for this project.

BLM Sensitive Species: (See attached report for details). There are 14 BLM sensitive species that have suitable habitat within 1/4 mile the proposed action area: eight birds, three mammals and four plants.

Environmental Effects from the Proposed Action: In the long term, reconstruction of the diversion dam would benefit the vast majority of these BLM sensitive species. The project would create pools, improve native fish habitat, increase insect prey populations, and improve river bank vegetation needed for foraging, nesting and denning. The decreased amount of in stream disturbance needed for maintenance would reduce the amount of disruptions during the bird breeding season. In the short-term, there would be minor negative effects to ferruginous hawk, golden and bald eagle because construction would be conducted during the middle of their breeding season. There would be minor discountable effects from noise, reconstruction, human presence on American white pelican, white-faced ibis and swift fox. There would be no effect to fringed myotis, Townsend's big-eared bat, *Aquiligea chrysantha* var. *rydbergii*, *Asclepias unicalis*, and *Mentzelia chrysantha*.

Recommended Conservation Measures: 1. Before construction in March, survey for wintering bald eagles that may be still roosting in the action area, especially if winter is severe or prolonged. If positive detections of roosting bald eagle are made during winter within ½ mile of the action area, avoid operating ground based mechanical equipment within that buffer zone whenever possible, or operate in a manner that does not cause the species to flush from roosting sites, especially during severe or prolonged winter.

Conduct a breeding raptor survey before construction starts during the breeding season appropriate for the species of concern. Area to be surveyed should include all proposed construction and activity areas and suitable nesting habitat within a 1/8 mile of the entire project area. The survey should be conducted during the times when raptors of concern would be breeding in Colorado (Nelson and Leukering 2006): bald eagle- January 1 to August 10; golden eagle -February 1 to August 15; ferruginous hawk- March 5 to July 31; prairie falcon -March 10 to July 25. Surveys shall be conducted by a qualified breeding bird surveyor between sunrise and 10:00 a.m. under favorable conditions, following interior line transects (Hanni 2002) or Monitoring Colorado Bird's (MCB) point transects (Leukering 2000), or other pre-approved protocol. If breeding activity is detected, follow best management practices specific for the raptors detected, which usually includes applying a spatial buffer (usually ½ mile) and/or timing restriction as recommended by US Fish and Wildlife Service (2008) whenever and wherever possible. If surveys result in negative detection of breeding raptors, then reconstruction activities could proceed immediately. If bird surveys are not feasible, then implement best management practices that would allow reconstruction chicks to successfully fledge the nest, or until nest success/failure can be confirmed to ensure full protection of migratory raptor breeding activities. Reconstruction activities that

are initiated prior to March 1st may continue through the breeding season because it is assumed that raptors would become accustomed to the disturbance by choosing to nest in the action area after reconstruction begins.

Migratory Birds: (See attachment for details). There are 16 migratory bird species with suitable habitat in the action area that have been noted by BLM, US Fish and Wildlife Service or Colorado Partners in Flight to have declining populations.

Since none of the BLM priority migratory birds or CO Partners in Flight birds of conservation concern have been detected in the action area during March, it is expected there would be no effects to the breeding behaviors for osprey, red-tailed hawk, Swainson's hawk, sharp-shinned hawk, prairie falcon, Cooper's hawk, lazuli bunting, northern shrike, merlin, Cassin's finch, MacGillivray's warbler, and Wilson's warbler. Since vegetation would not be affected, their nesting and foraging habitats would not be affected. With reconstruction and improved fish habitat, it is expected that stream bank vegetation and insect prey populations would increase in abundance. These changes would benefit BLM sensitive species or CO Partners in Flight birds of conservation concern to a minor degree by providing better forage, hunting and nesting opportunities.

Recommended Conservation Measures: Conduct breeding bird surveys before reconstruction starts during the breeding season appropriate for the migratory bird species of concern, especially mallard, Canada goose and great blue heron. Area to be surveyed should include all proposed construction and activity areas and suitable nesting habitat for the species of concern within a 1/8 mile of the entire project area. The survey should be conducted during the times when migratory bird species of concern would be breeding in Colorado (Nelson and Leukering 2006). Surveys shall be conducted by a qualified breeding bird surveyor between sunrise and 10:00 a.m. under favorable conditions, following interior line transects (Hanni 2002) or Monitoring Colorado Bird's (MCB) point transects (Leukering 2000), or other pre-approved protocol. If bird breeding activity is detected, follow best management practices for avoiding effects to the breeding migratory birds of concern, which may include a timing restriction, whenever and wherever possible. If surveys result in negative detection of breeding migratory birds, then reconstruction activities could proceed immediately. If bird surveys are not feasible, then implement best management practices that allow chicks to fledge the nest or until nest success or failure can be confirmed. Reconstruction activities that are initiated prior to March 1st may continue through the breeding season because it is assumed that migratory birds would become accustomed to the disturbance by choosing to nest in the action area after reconstruction begins.

Fisheries and Riparian: In the planning and discussions for the maintenance of this structure, coordination with Colorado Parks and Wildlife occurred on issues of allowance for fish passage and angling opportunity. The Army Corps of Engineer was also contacted. Structure maintenance design features are being planned to make the maintenance eventually result in an improved overall design for other resources in addition to water diversion.

Realty: Upper Arkansas Water Conservancy District, holder of right-of-way COC-73711, was provided notice of the proposed action on April 28, 2015. Right-of-way COC-73711, is for a gauging station near the project area.

Wastes, Hazardous or Solid: If the project involves oil or fuel usage, transfer or storage, an adequate spill kit and shovels are required to be onsite during project implementation. The project proponent will be responsible for adhering to all applicable local, State and Federal regulations in the event of a spill, which includes following the proper notification procedures in BLM's Spill Contingency Plan.

If concrete is proposed as part of the project, all concrete washout water needs to be contained and properly disposed of at a permitted offsite disposal facility.

D. Approval and Contact Information

NAME OF PREPARER: John Smeins, Hydrologist

SUPERVISORY REVIEW: Marnie Medina, Acting Associate Field Manager for Renewable Resources

NAME OF ENVIRONMENTAL COORDINATOR: /s/ Martin Weimer

DATE: 11/3/15

DECISION AND RATIONALE: I have reviewed this Categorical Exclusion and have decided to implement the Proposed Action.

This action is listed in the Department Manual as an action that may be categorically excluded. I have evaluated the action relative to the 10 criteria listed above and have determined that it does not represent an exception and is, therefore, categorically excluded from further environmental analysis.

SIGNATURE OF AUTHORIZED OFFICIAL:

/s/ Patricia M. Bailey

Patricia M. Bailey, Acting Field Manager

DATE SIGNED: 12/7/15