



United States  
Department of  
Agriculture

Forest  
Service

March 2009



# **WATER USE FOREST-WIDE SPECIAL USE PERMIT RENEWAL PROJECT**

## **Decision Memo**

**USDA Forest Service, Eastern Region  
Green Mountain National Forest  
Middlebury, Rochester, and Manchester Ranger Districts**

For Information Contact: Dave Bosch  
Green Mountain & Finger Lakes National Forests  
231 N. Main Street  
Rutland, Vt. 05701  
(802) 747-6746  
FAX (802) 747-6766  
E-mail: [dbosch@fs.fed.us](mailto:dbosch@fs.fed.us)  
Responsible Official: Greg Smith  
Middlebury/Rochester District Ranger  
Green Mountain National Forest  
1007 Route 7 South  
Middlebury, Vt. 05753  
(802) 388-4362  
FAX (802) 388-3842  
Email: [gsmith@fs.fed.us](mailto:gsmith@fs.fed.us)

This document can be made available in large print.  
Contact Dave Bosch (802) 747-6746

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's target center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-w, Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250-9410 or call 202-720-5964 (voice or TDD).

USDA is an equal opportunity provider and employer.

**Water Use Forest-wide Special Use Permit Renewal Project  
Decision Memo  
USDA Forest Service, Eastern Region, Green Mountain National Forest  
Middlebury, Rochester, and Manchester Ranger Districts**

**I. SUMMARY**

As District Ranger for the Rochester and Middlebury Ranger Districts of Green Mountain National Forest (GMNF), I am authorizing renewal of the existing special use permits (SUP) for eleven individuals allowed use of NFS lands for their home water systems. The permits will be for a 20 or 30 year period as specified in the list below. These permits will allow for various small structures and facilities on National Forest System (NFS) lands ranging from impoundments to spring boxes to water pipes. See the section below for details.

**II. DECISION TO BE IMPLEMENTED**

**A. Background and Project Area**

Currently, the following individuals are permitted for the activities as listed:

On the Middlebury RD:

Lawrence Edmond, 0.01 acre (NFS land) of a 2 acre impoundment created by a dam on private land; located off Forest Road (FR) 90, off Notch Road in the Town of Bristol; 30 year renewal term.

Carl and Esther Johnson, 0.08 mile for 0.09 acre of ¾-inch water line. Located in the Moosalamoo National Recreation Area near the intersection of FR 32 and FR 108 in the Town of Goshen; 30 year renewal term.

Bruce and Thomas Moseley, 0.4 acre (NFS land) of a larger impoundment created by a dam on private land. Located off FR 350 in Town of Lincoln; 30 year renewal term.

David Todd, 0.1 mile for 0.03 acre of ¾-inch buried water line plus 4 12-14 covered terra cotta pipe spring boxes. Located south of FR 119, off SR 53 in the Town of Leicester; 20 year renewal term.

On the Rochester RD:

Kenneth Lewis, 0.05 mile for 0.04 acre of water line, spring box, and pump house. Located near junction of FR 100 and Fasset Hill Road (FR 91) in Town of Hancock; 20 year renewal term.

David Outerbridge, 0.1 mile for 520 feet of above ground PVC pipe and an existing spring box off FR 41, the West Hill Road, in the Town of Rochester; 20 year renewal term.

Barry Small, 0.15 mile of above ground water pipe and enclosed springbox located off the Tunnel Brook Road on the Rochester side, the Town of Rochester; 20 year renewal term.

On the Manchester RD:

Susan Kramer, 0.01 mile for 0.05 acre of 1-inch plastic hose and a covered concrete spring box 4-foot by 6-foot by 8-foot located south of SR 11 in US Tract 26 in the Town of Winhall; 20 year renewal term.

Bruce Moreton, 0.24 mile for 0.1 acre of 1-inch plastic pipe and a covered spring box, located off Wallingford Pond Road in the National Recreation Area, Town of Wallingford; 30 year renewal term.

Bernard and Jean Schrum, 327 feet for 0.1 acre of plastic pipe and a covered spring box, plus use of a 1-foot by 1-foot chimney attached to the camp on adjoining private land, all located off TH 9 north of Flood Brook in the Town of Peru; 20 year renewal term.

Thomas Seward, 0.6 mile for 1.8 acre for a water diversion dam with filter beds and 3,240 feet of buried 4-inch pipeline on Feller (aka Fowler) Brook north of Wallingford Pond in the Town of Wallingford; 30 year renewal term.

Maps of each of these permitted areas may be found in the Project Record. The authorized activities would occur in Addison, Windsor, Rutland, and Bennington counties.

No changes to these existing uses are proposed.

#### **B. Purpose and Need**

The purpose of this action is to authorize renewal of existing SUPs that provide for minor necessary uses of NFS lands. These have been existing uses and have shown to result in little or no impacts to NFS lands.

#### **C. Description of Decision**

My decision is to authorize renewal of the existing eleven SUPs as described above. These renewed permits will be inspected and subject to the general terms and conditions of the SUP associated with these types of activities. Beyond these terms and conditions, Forest Plan standards and guidelines would be applied as needed to the activities associated with these SUPs. Little or no impacts to NFS lands are expected. No mitigative measures are necessary at this time.

Documentation of the NEPA analysis for this project may be found in the Project Record located at the three GMNF District Offices (Middlebury, Rochester, and Manchester). Additionally, permit detail may also be found at the GMNF Forest Supervisor's Office in Rutland, Vermont.

### **III. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION**

Decisions may be categorically excluded from documentation in an environmental impact statement or an environmental assessment when they are within one of the categories found at 36 CFR 220.6(d) and (e), and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

#### **A. Category of Exclusion**

Based upon the environmental analysis contained in the Project Record and on experience with

similar activities on the GMNF, I have concluded that this decision can be appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment. I have determined that the selected action is a routine activity within the following category of exclusion found at 36 CFR 220.6 (e)(3), “approval, modification, or continuation of minor special uses of NFS lands that require less than five contiguous acres of land.”

## **B. Extraordinary Circumstances**

The list of extraordinary circumstances that were examined for this analysis may be found at 36 CFR 220.6(b). The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effects of a proposed action on these resource conditions that determines whether extraordinary circumstances exist. I have concluded that there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the Project Record. A summary of the project’s potential effects on each resource condition is as follows:

### 1. Federally Listed Threatened or Endangered Species or Designated Critical Habitat, Species Proposed for Federal Listing or Proposed Critical Habitat, or Forest Service Sensitive Species

The Endangered Species Act requires that federal activities not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. In accordance with Section 7(c) of this Act, a report of the listed and proposed, threatened, or endangered species that may be present in the project area was reviewed. The likelihood for occurrence of any federally-listed threatened and endangered (T&E) species in the project areas is low. The GMNF has only historic occurrence records for three T&E species: gray wolf, eastern cougar, and Canada lynx. These species are not known to occur on the GMNF, and their presence in the project areas at any time in the near future is unlikely (GMNF 2006). One endangered species, the Indiana bat, does occur on the GMNF. The Johnson Water Supply site is located within 5 miles of a known Indiana bat hibernaculum (Brandon Silver Mine), meaning the area could be occupied by Indiana bats, especially during fall swarming. However, the Johnson Water Supply site and the nearby David Todd Spring site are both located at elevations higher than 800 feet, substantially reducing the likelihood that Indiana bats will occur near the sites. None of the other water SUP sites is located in or near an area where Indiana bats are likely to occur, as described in the 2006 GMNF Forest Plan (GMNF 2006). The project areas do not include potential or critical habitat for any T&E species. None of the SUPs includes any changes from existing conditions; there would be no disturbance of soil or vegetation at any site. Consequently, no impacts to T&E species or habitats would be anticipated, and re-issuance of these 11 existing water-access SUPs would have “No Effect” on T&E species.

This project sites have not been surveyed for Regional Forester Sensitive Species (RFSS) animals, and various RFSS could occur in the vicinities of these water-access SUP sites. None of the SUPs includes any changes from existing conditions; there would be no disturbance of soil or vegetation at any site. Consequently, reissuance of these 11 existing water-access SUPs would have “No Impact” on any Regional Foresters Sensitive Species or their preferred habitats. No mitigation on behalf of TES animal species is recommended at

this time.

There are currently no federally listed Threatened or Endangered plant species on the GMNF. No plants on the RFSS list are known from the area. Since no new ground disturbance or vegetation management will occur and the habitat will not change, potential habitat was not investigated. No impact to individual plants or habitat is expected as a result of this project, and so it is not likely to contribute to a trend towards Federal listing or loss of viability.

Therefore, it has been determined that implementation of this decision would have 'no effect' on federally listed animal or plant species or their critical habitats. There would also be no significant impact to any plant or animal RFSS (Wildlife Biological Evaluation, Project Record; Plant Biological Evaluation, Project Record).

2. Floodplains, Wetlands, or Municipal Watersheds

There is no Water Source Protection Areas (WSPA), floodplains or major wetlands in or near the proposed project site. Any minor impacts to small wetland areas or other soil and water impacts would be addressed by application of Forest plan standards and guides, and monitoring of permit terms and conditions. Therefore, there would be no significant impact to WSPAs, floodplains or wetlands (Forest Soil and Water Specialists input, Project Record).

3. Congressionally Designated Areas, such as Wilderness, Wilderness Study Areas, or National Recreation Areas

Wilderness:

The project is not in any Wilderness areas. Wilderness is defined on the Forest as Management Area 5.1 (Forest Plan, p. 49). This decision, with impacts limited to the immediate area of activity, would not affect any Wilderness area (Recreation Planner input, Project Record).

Wilderness Study Areas:

There are no Wilderness Study Areas within the project area. This decision would not affect Wilderness Study Areas (Recreation Planner input, Project Record).

National Recreation Areas:

For the Moreton SUP, a short section of the pipe and the spring box lie in the Robert T. Stafford White Rocks National Recreation Area (NRA). The Johnson SUP facilities lie in the newly created Mossalamoo NRA. Non-recreation special uses are not prohibited in either of these NRAs. Continuation of this existing use will have no affect on the character of the NRAs. None of the other SUPs occur in any NRA, and therefore, there is no significant impact to National Recreation Areas on the Forest (Recreation Planner input, Project Record).

Wild and Scenic Rivers:

Although the GMNF does not contain any Congressionally designated Wild and Scenic Rivers, there are many river segments that are eligible to be further considered for addition to the National Wild and Scenic River System. These river segments and their associated corridors would lie within the eligible Wild, Scenic, and Recreational Rivers Management Area (MA 9.4). None of the river segments eligible to be considered for addition to the

National Wild and Scenic River System are found in the project areas (Recreation Planner input, Project Record).

4. Inventoried Roadless Areas or Potential Wilderness Areas

A detailed assessment of which, if any, existing water use permits lie in Forest Plan IRAs was not completed. Any of the permits that are found in IRAs have been in place many years before the IRAs were created; during identification of IRAs, it was determined that existing permits such as these would have no impact on roadless characteristics. Should any of the permitted areas lie in these IRAs, continuation of these minor SUP activities will not result in significant impacts on forest roadless areas (Forest Planner input, Project Record).

5. Existing and Candidate Research Natural Areas

These project sites do not lie in any Research Natural Areas. This decision, with impacts limited to the immediate area of activity, would not affect Research Natural Areas (Forest Ecologist input, Project Record).

6. American Indian and Alaska Native Religious or Cultural Sites

See Item 7 below.

7. Archaeological Sites, or Historic Properties or Areas

This decision complies with the National Historic Preservation Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act. Little or no ground disturbance is expected from this project. There would be No Effect on any historic properties or archaeological sites (Forest Archaeologist input, Project Record).

8. Other Resources

In addition to the above resource conditions that could lead to extraordinary circumstances, I also have considered the direct, indirect, and cumulative effects to other resources such as soil/water, fisheries, visuals, recreation, special areas, and non-native invasive species. Re-issuing these SUPs would not result in significant impacts to these resources. Applicable Forest Plan Standards and Guidelines will be implemented as necessary.

#### **IV. PUBLIC INVOLVEMENT**

This project was internally scoped with Forest Service staff during Small Projects Day on March 25, 2008. External public involvement included contact with the applicants (permittees) as needed and listing of this project in the *Green Mountain National Forest Schedule of Proposed Actions* (SOPA). This project will remain in the SOPA until implemented.

#### **V. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS**

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Forest Plan Consistency (National Forest Management Act) –The National Forest Management Act (NFMA) requires the development of long-range land and resource management plans, and that all site-specific project activities be consistent with direction in the plans. Revision of the GMNF Land and Resource Management Plan (Forest Plan) was completed and approved in 2006. The Forest Plan provides direction for all management activities on the GMNF.

The Edmond, Lewis, Kramer, Schrum, Outerbridge, and Seward SUPS lie in Management Area (MA) 3.1, Diverse Forest Use. The Johnson SUP lies in the Moosalamoo NRA, MA 8.9. The Moreton SUP lies in the Robert T. Stafford White Rocks NRA, MA 8.3. The Moseley SUP lies in the Remote Wildlife MA 6.3. The Small SUP lies in M.A. 6.2, Diverse Backcountry. The Todd SUP lies in the Escarpment MA 8.5.

Forest-wide Standard S-2 for Non-recreation special uses states that SUPs shall be administered consistent with management area direction. SUPS are not prohibited in any of the MAs stated above. In the direction for MA 6.3 Remote Wildlife and for MA 8.5 Escarpment, guidelines for non-recreation special uses states that “Non-recreational special use permits may be authorized provided they are consistent with Management Area emphasis and Desired Future Condition and they will neither threaten nor diminish the character or purpose for which the MA was designated.” MA 8.5 guidelines also state that “existing special use permits should be phased out when feasible”. Review of the existing Todd SUP indicates a continuing need for this use and that no adverse impacts to the escarpment will result (Forest Ecologist input, Project Record). These uses are consistent with management area direction and the standards and guidelines for non-recreation special uses. As required by NFMA Section 1604(i), I find this project to be consistent with the Forest Plan including goals, objectives, desired future conditions, and Forest-wide and Management Area Standards and Guidelines.

Endangered Species Act - The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. In accordance with Section 7(c) of this Act, a report of the listed and proposed, threatened, or endangered species that may be present in the project area was reviewed. See Section III, Item B.1 of this document.

Clean Water Act – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through Forest Plan Standards and Guidelines, specific project design criteria, and/or mitigation measures to ensure protection of soil and water resources.

Wetlands (Executive Order 11990) - Executive Order 11990 directs the agency to avoid to the extent possible the adverse impacts associated with the destruction or modification of wetlands, and to avoid support of new construction in wetlands wherever there is a practical alternative. See Section III, Item B2 of this document.

Floodplains (Executive Order 11988) - Executive Order 11988 directs the agency to avoid to the extent possible the adverse impacts associated with the occupancy and modification of floodplains, and to avoid support of floodplain development wherever there is a practical alternative. See Section III, Item B2 of this document.

National Historic Preservation Act - Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. It also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. See Section III, Item B.7 of this document.

Archaeological Resources Protection Act - The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. See Section III, Item B.7 of this document.

Native American Graves Protection and Repatriation Act - The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items. Little or no ground disturbance is expected from this project. See Section III, Item B.6 of this document.

Wild and Scenic Rivers Act - See Section III, Item B.3 of this document.

Federal Noxious Weed Act of 1974 and Executive Order 11312 (Non-Native Invasive Species) – The Federal Noxious Weed Act requires cooperation with State, local, and other federal agencies in the management and control of non-native invasive species (NNIS); Executive Order (EO) 11312 requires all pertinent federal agencies (subject to budgetary appropriations) to prevent the introduction of NNIS. This decision meets the intent of this law and EO by incorporating all pertinent Forest Plan Standards and Guidelines to ensure the management and control of NNIS.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this order. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

## **VI. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES**

This decision is not subject to an administrative review or appeal pursuant to 36 CFR 215 and the Earth Island Institute v. Ruthenbeck Ruling of October 19, 2005.

This decision is subject to appeal pursuant to 36 CFR 251 by those who hold or, in certain instances, those who apply for written authorizations of a similar nature to occupy and use National Forest System lands. To appeal this decision under 36 CFR 251, a written Notice of Appeal, meeting the content requirements at 36 CFR 251.90, must be postmarked or received within 45 calendar days after the date of notice of this decision to applicants and holders of written authorizations of a similar nature to occupy and use National Forest System land. However, when the 45-day filing period would end on a Saturday, Sunday, or Federal Holiday, the filing time is extended to the end of the next Federal working day. The Notice of Appeal must be sent to: USDA, Forest Service, Green Mountain & Finger Lakes National Forests,

ATTN: Forest Supervisor, 231 Main Street, Rutland, VT 05701. The Notice of Appeal may alternatively be faxed to: USDA, Green Mountain National Forest, ATTN: Forest Supervisor, 802-747-6766. A copy of the appeal must simultaneously be sent to the District Ranger, Middlebury Ranger District, 1007 Route 7 South, Middlebury, Vt. 05753; fax to 802-388-3842. If an appeal is filed, I am willing to meet and discuss concerns. Additionally, if an appeal is filed, an oral presentation concerning the appeal (36 CFR 251.97) and/or stay of implementation (36 CFR 251.91) of the decision may be requested at any time prior to closing the appeal record.

#### **VII. IMPLEMENTATION DATE**

This decision may be implemented immediately.

#### **VIII. CONTACT PERSON**

Further information about this decision can be obtained from Special Use Administrator Dave Bosch during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Green Mountain & Finger Lakes National Forest Supervisor's Office, 231 North Main Street, Rutland, Vermont 05701, phone: (802) 747-6734, Fax (802-747-6766), or e-mail: dbosch@fs.fed.us.

#### **IX. SIGNATURE AND DATE**

/s/ Greg Smith

Date: 24 March 2009

GREG SMITH  
Rochester/Middlebury District Ranger, Green Mountain National Forest  
Responsible Official