

CWCB Acquisition of Stapleton Brothers' Ditch

November 16, 2009

Trust Agreement Basics

- Opportunity for CWCB to use Pitkin County's portfolio of water rights for instream flow:
 - Stapleton Brothers' Ditch available immediately;
 - 30 other water rights available at a later date; and
 - Other water rights as acquired by the County.
- Donation to the CWCB at ***no cost***.

Why Approve the Trust Agreement?

- Gives effect to the General Assembly's intent for the instream flow program.
- Will provide benefit to instream flow program.
 - Objectors desire to use the SBD water right themselves if not used for ISF purposes.
- Preserves value of Stapleton Brothers' Ditch:
 - Pre-1922 water right
 - HUP-beneficiary

Statutory Direction to CWCBC

- 1973 – Creation of instream flow program:
 - *Appropriation* of instream flow water rights;
 - *Preservation* of the natural environment;
 - *Necessary* for *minimum* instream flows.

Statutory Direction to CWCBC

- 2002 – Senate Bill 156:
 - *Improve* the natural environment;
 - In amounts *greater than* the minimum necessary to preserve instream flow;
 - *Acquire* water rights to do so.

- CWCBC “may acquire... such water, water rights or interest in water... in such amounts as the board determines is appropriate for stream flows... to preserve or improve the natural environment to a reasonable degree.” C.R.S. § 37-92-102(3).

Statutory Direction to CWCBC

- 2008 – House Bill 1280:
 - Expanded instream flow program by creating incentives to dedicate water rights to instream flow program.
 - Long-term agreements
 - No abandonment of water rights
 - Preservation of HCU
 - Reaffirmed importance of instream flow program.

Objectors' Interest is Using SBD Water

- Want Stapleton Brothers' Ditch abandoned so they may use water.
- Are not legally entitled to continuation of water available during period of reduced use.

Case No. 99CW306 - Change of SBD

- Quantification of water that may be changed to other uses.
- Reduced use accounted for.
- Final determination of historical use.
- Prevents injury to other users.

Value of Stapleton Brothers' Ditch

- Starwood purchased 65 acre-feet of HCU credits in 2008.
 - \$10,000 per acre-foot.
- Value based on SBD attributes:
 - Pre-1922 water right
 - HUP-beneficiary
- Value would be preserved for instream flow use.

Value of SBD Will Be Protected

- Value of Stapleton Brothers' Ditch:
 - Pre-1922 water right
 - HUP-beneficiary
- H.B. 1280 allows consumptive downstream use
- Pitkin County is actively negotiating downstream lease of consumptive use credits.

Valuable Opportunity for CWCBC

- CWCBC is empowered to acquire water rights to improve and preserve.
- Trust Agreement is opportunity to draw on Pitkin County's portfolio of water rights.
- Stapleton Brothers' Ditch is exemplary water right for instream flow program.

PITKIN COUNTY OFFER OF WATER RIGHTS TO THE INSTREAM FLOW PROGRAM



PITKIN COUNTY WATER RIGHTS

❖ Acquired through different programs

Open Space Programs

FAA Grants



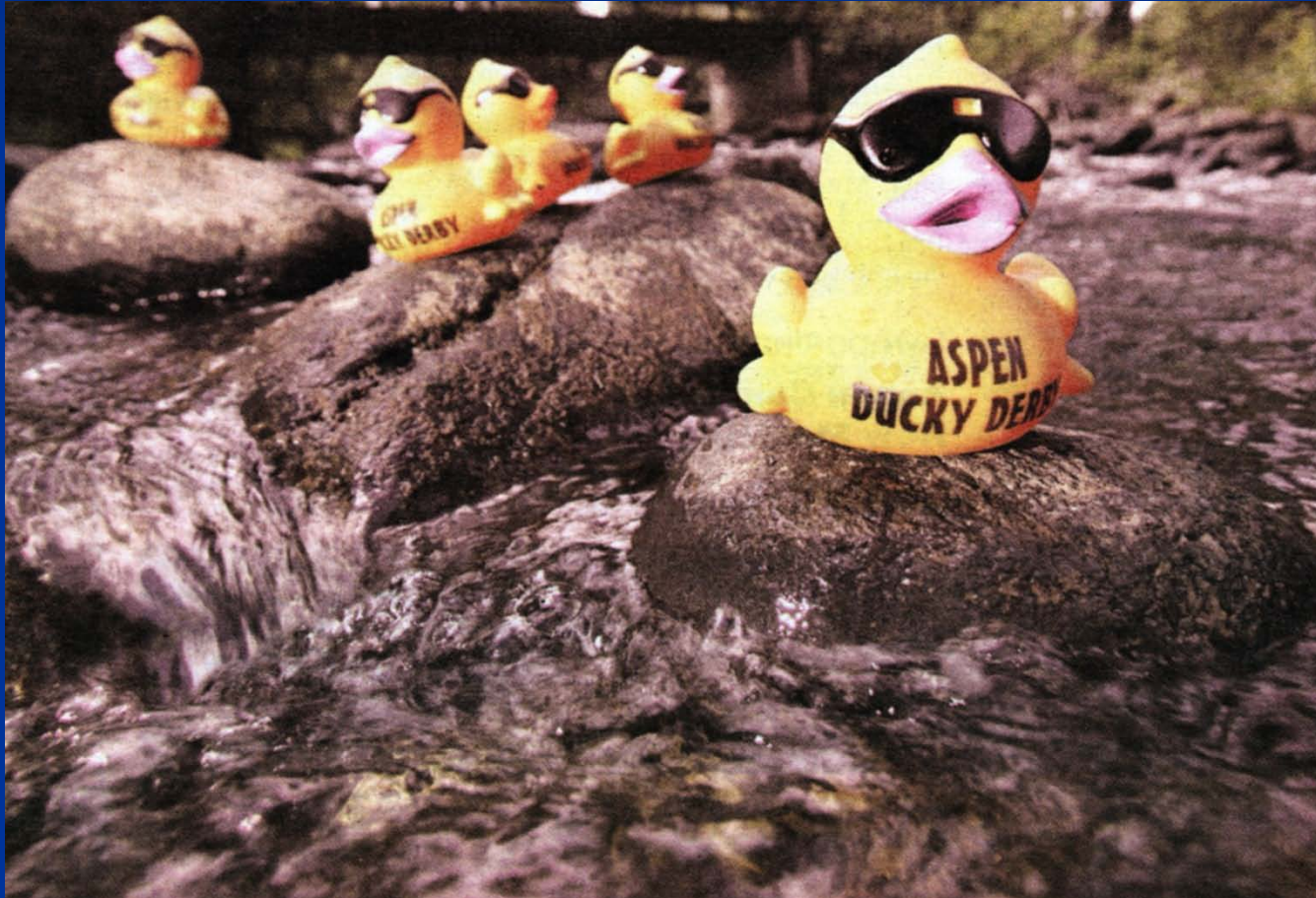
❖ Changes in land use and land management programs have reduced the need to divert water

Northstar Preserve



NEED FOR IMPROVED RIVER FLOWS

Courtesy of Aspen Historical Society, Aspen Times Collection



❖ Drought 2001 and 2002



Roaring Fork River Near Aspen 2002

Courtesy of Roaring Fork Conservancy



Headgate and Diversion Ditch off Roaring Fork River 2002



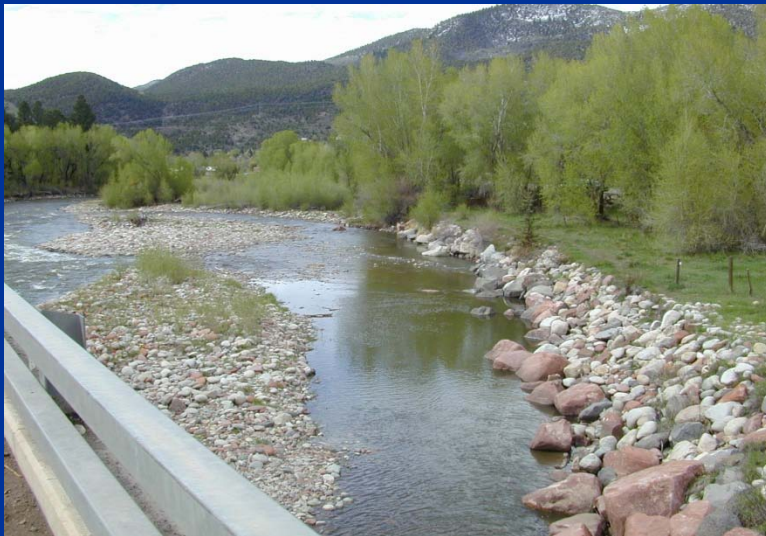


TRUST AGREEMENT ADVANTAGES

- ❖ Satisfies Pitkin County HRC and TABOR restrictions
- ❖ Ability to add additional water rights
- ❖ Allows CWCB to benefit instream flow program without acquisition cost
- ❖ Inclusion of Pitkin County senior water rights to instream program
- ❖ New consumptive uses for water downstream of target reach

FUTURE USE OF TRUST AGREEMENT

- ❖ County sales tax dedicated to protection of the Roaring Fork drainage approved by 62% of the electorate November 2008
- ❖ Principal purpose of the sales tax revenue is to protect instream flows within Pitkin County and Roaring Fork watershed



Reach of the Roaring Fork River
above Town of Basalt to be benefited
by the Trust Agreement

OFFER TO DEDICATE WATER RIGHTS THROUGH TRUST AGREEMENT

- ❖ Pitkin County Board of County Commissioners has approved Trust Agreement as proposed and endorsed by CWCB staff



Outline of Analysis

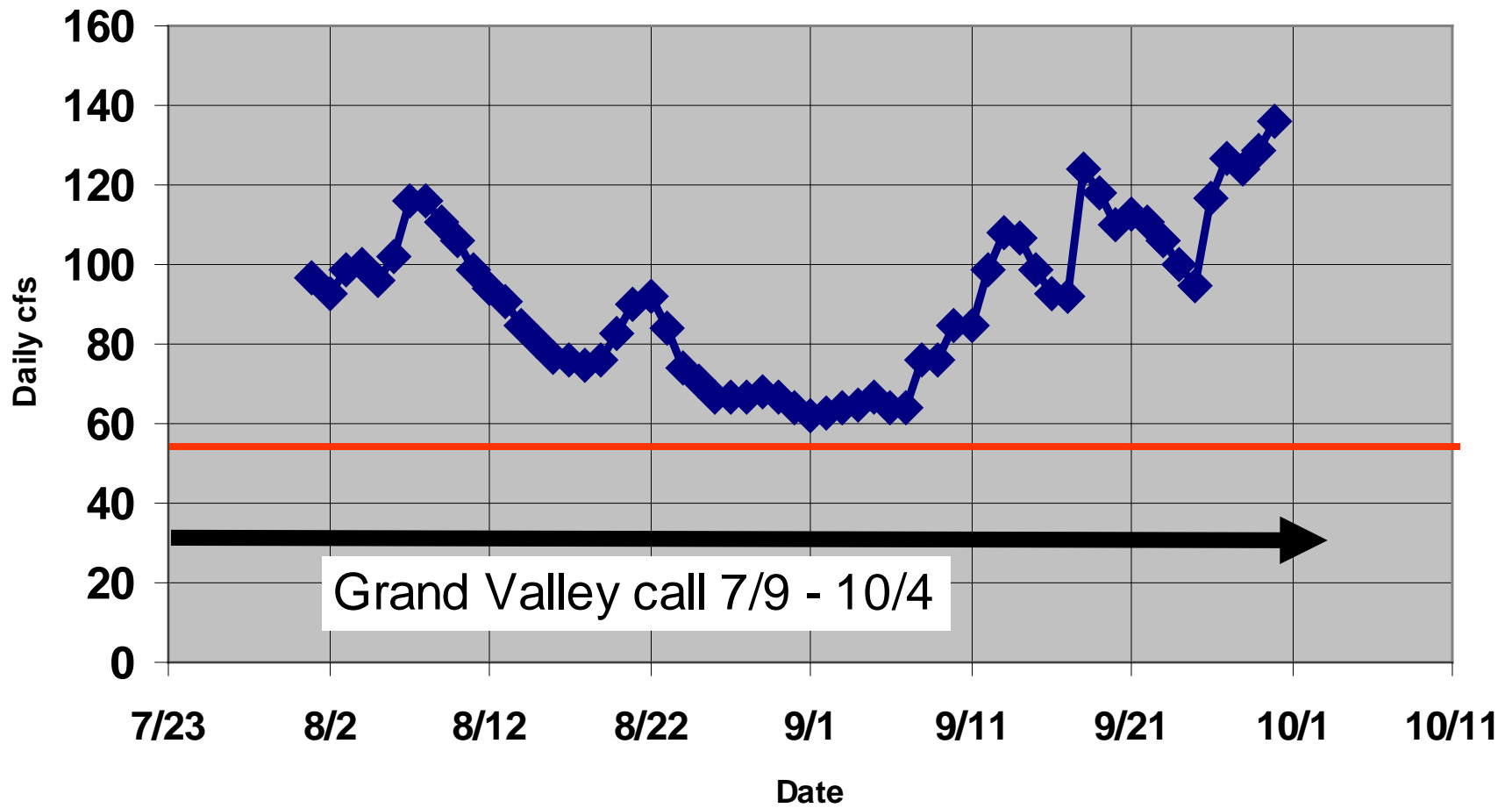
- Stream flows
 - SBD will firm up dry year ISF supply
- Role of 99CW306 Decree
- Downstream market for historical consumptive use credits

Roaring Fork and Maroon Creek Stream Flows

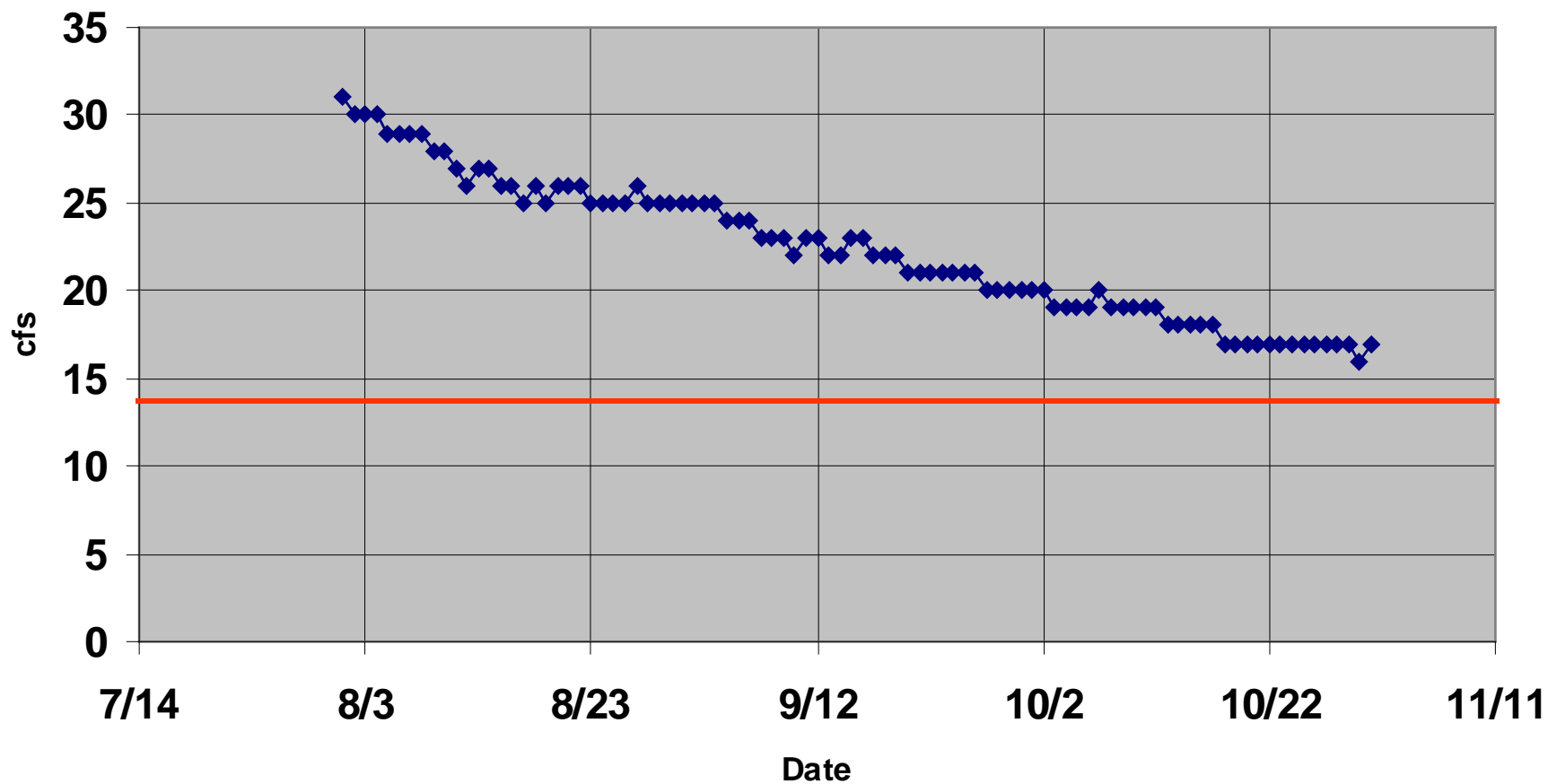
- In average to wet years, stream flows in Maroon Creek and the Roaring Fork River are greater than ISF
 - Infrequent local “calls”, if any
 - More often Cameo call
- Stapleton Brothers’ Ditch is HUP-protected
 - Can continue to divert if Cameo call



Roaring Fork below Maroon Creek 2002



Maroon Creek above Aspen 1977

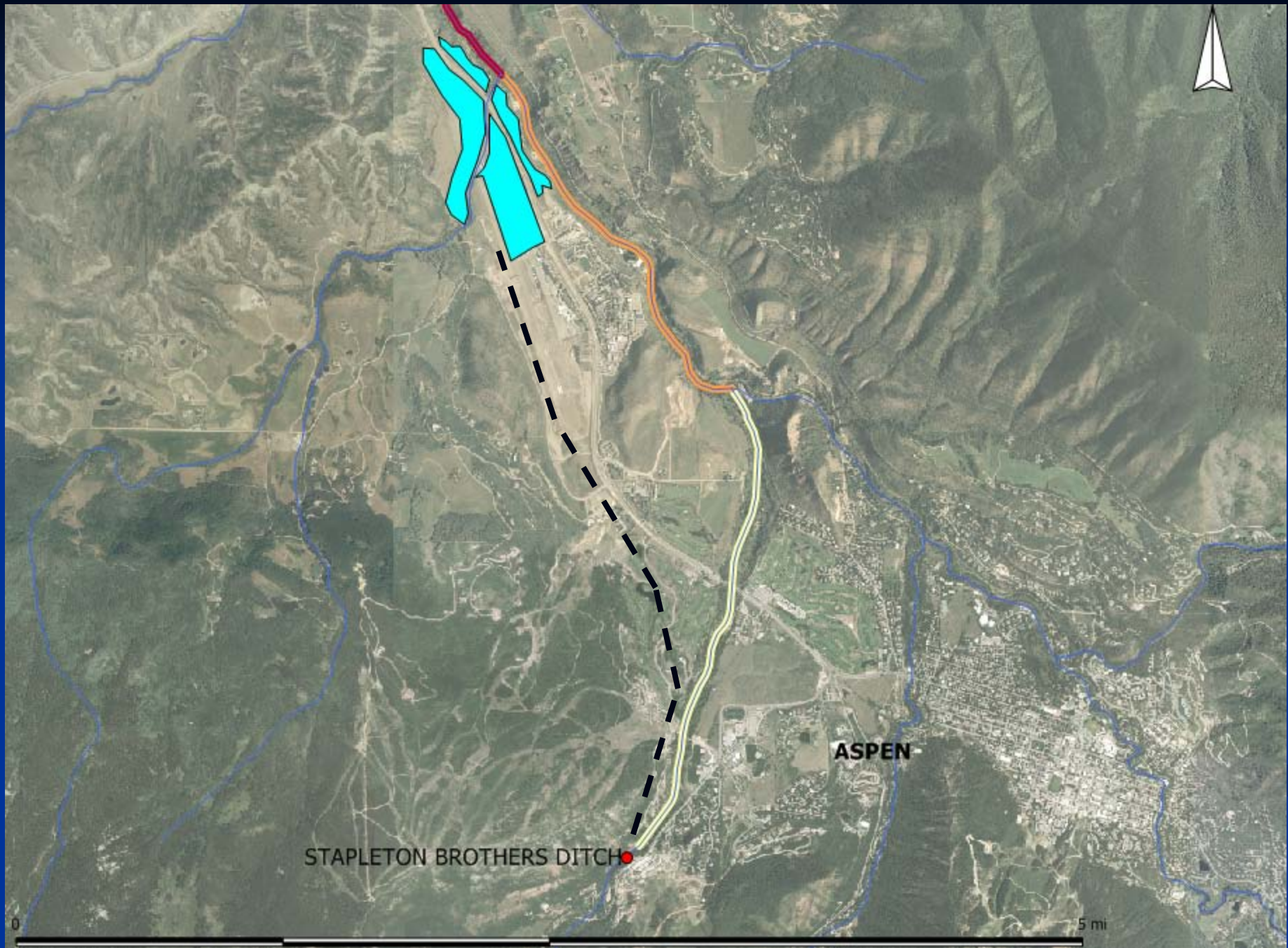


Benefit of Stapleton Brothers' Ditch

- Like other water users, working to “firm-up” dry year supplies
- During August and September of dry years, flows are reasonably close to or less than the ISF amounts
 - Driest 10% of years
- Stapleton Brothers' Ditch provides additional certainty in dry years

Stapleton Brothers' Ditch - Historical

- Irrigated 136 acres at Aspen-Pitkin County Airport
- Decreed for 8 cfs in 1936
- 1904 appropriation date
- Acquired by Pitkin County in 1996



Stapleton Brothers' Ditch – 99CW306

- Quantified historical consumptive use
 - Accounts for reduced use
 - Decreed 220 acre-feet per year of HCU
- Allowed historical irrigation and augmentation
 - Other uses would require change application
- Did not decrease 8 cfs diversion rate
- Decree is basis for change to ISF uses

Downstream Market for HCU

- Pre-1922 water right
 - Protected from Colorado River Compact call
- HUP beneficiary
 - Protected from Cameo call
- 119.25 acre-feet per year
 - Substantial supply of water