

**Summary**

Applicant seeks to change the point of diversion for the Beaver Dam Ditch to the headgate of the Gaskill Ditch using a new statutory procedure for a simple change in a surface point of diversion under section 37-92-305(3.5), C.R.S. The Application incorrectly claims that "[t]here are no intervening surface diversion points or inflows or decreed in-stream flow rights from or in St. Louis Creek between the decreed location of the Beaver Dam Ditch headgate and the Gaskill Ditch headgate." CWCB holds an instream flow water right on St. Louis Creek within this reach.

**CWCB Appropriations**

The CWCB holds the following instream flow water rights that could be injured by this application:

<b>CWCB Case No.</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>Watershed</b>	<b>County</b>
5-90CW316	St. Louis Creek	6/3.5	11/27/1990	Colorado	Grand

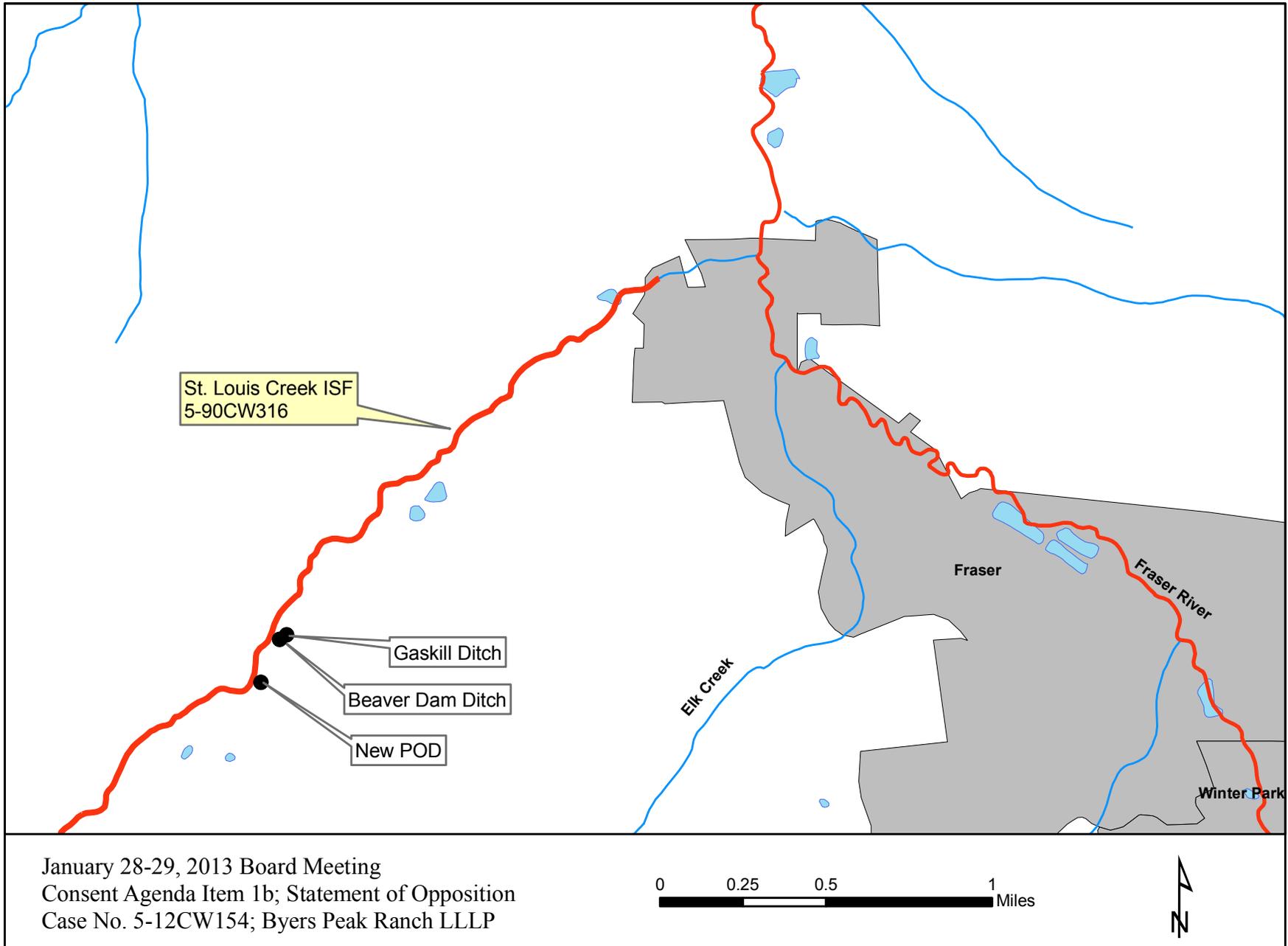
**Potential for Injury**

The proposed upstream change in point of diversion would cause an additional impact to approximately 1,590 feet of instream flow reach, and could cause an expansion of use that could injure the CWCB's instream flow water right. The Application does not meet the statutory definition for a simple change in a surface point of diversion under section 37-92-305(3.5), C.R.S., because it involves "a change of point of diversion from below or within a stream reach for which there is an intervening surface diversion point or inflow or decreed in-stream flow right to an upstream location within or above that reach." C.R.S. § 37-92-305(3.5)(a)(II).

CWCB asserted in its Statement of Opposition that the case should be dismissed without prejudice so that Applicant can then file a traditional application for change of water right. Under the statute, the dismissal is required because the claimed change does not meet the statutory definition of a simple change.

**Other Objectors**

The Town of Fraser also filed a statement of opposition in this case.



January 28-29, 2013 Board Meeting  
Consent Agenda Item 1b; Statement of Opposition  
Case No. 5-12CW154; Byers Peak Ranch LLLP