

Consent Agenda Item 1.t

March 22-23, 2017 Board Meeting

Case No. 16CW3055 (Water Division 7): Charles L. Mooney

Summary of Water Court Application

Applicant seeks diligence on a 1976 conditional water right, which includes a direct flow fish propagation use.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition in this case to protect CWCB's instream flow water rights and to protect CWCB's exclusive authority to hold instream flow water rights. A Statement of Opposition was filed on behalf of the Board in February 2017.

The CWCB holds the following instream flow water right in Water Division 7 in the Animas Watershed that could be injured by this application as follows:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
77W1764	Florida River	confl Salt Creek	confl Animas River	20 (10/15 - 6/30) 12 (7/1 - 10/14)	01/19/1977

Potential for Injury

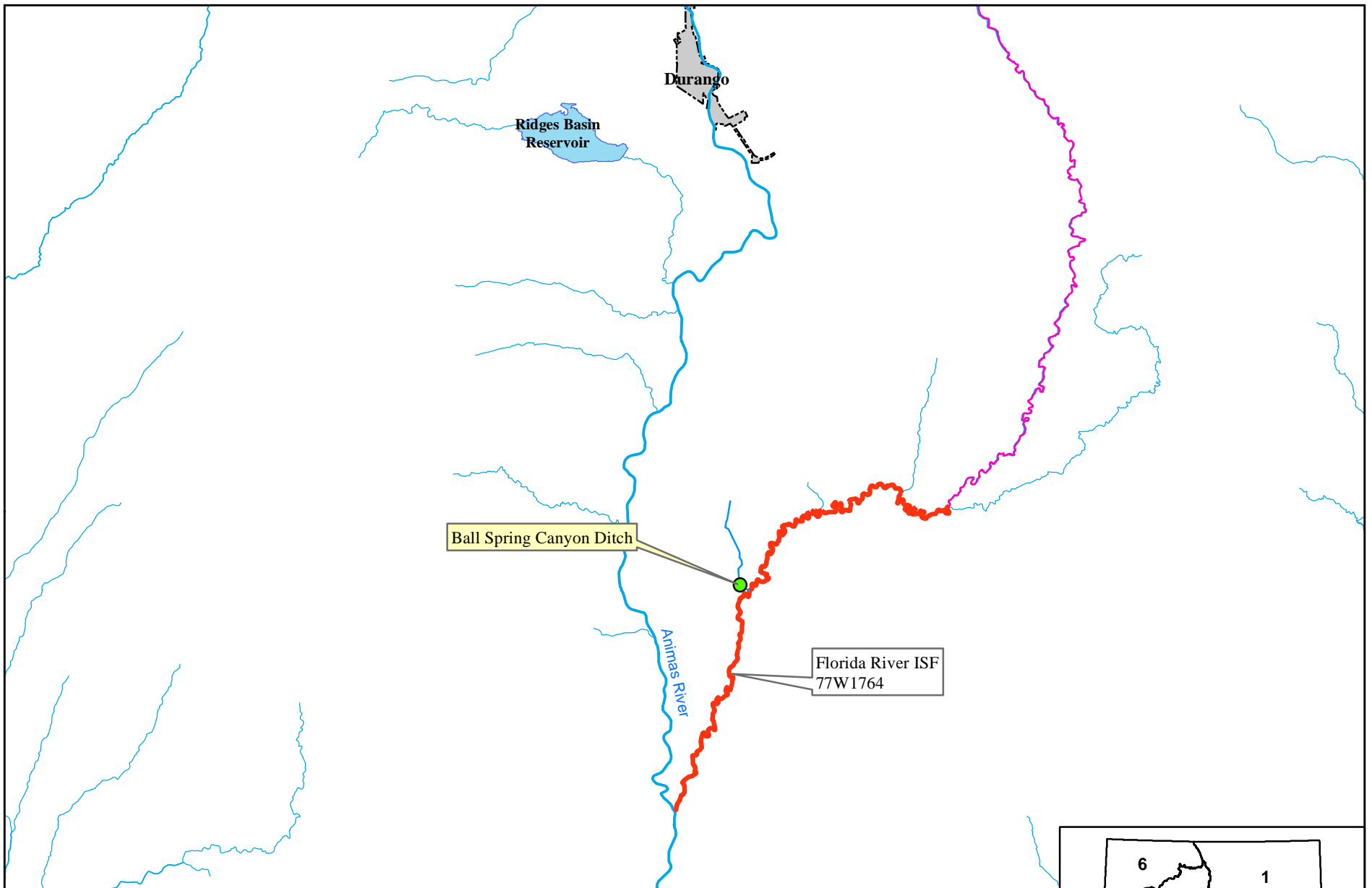
- Applicant's use of direct flow rights for fish propagation may not be valid given the ruling in *St. Jude's Co. v. Roaring Fork Club, L.L.C.*, 2015C051, 351 P.3d 442 (Colo. 2015).
- The potential flow through water right could injure the CWCB's instream flow water right because it is fully depletive to a segment of the intervening instream flow.
- Applicant's intended use of this conditional water right is unclear from the application.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights by expansion of use of water rights that are senior to instream flow water right.

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



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