

Consent Agenda Item 1.p

March 20-21, 2019 Board Meeting

Case No. 18CW3199 (Water Division 5); William Powell

Summary of Water Court Application

This is an Application for Approval of Plan for Augmentation.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2019 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds instream water rights, including the following water rights in Water Division 5 in the Eagle Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0126	Eagle River	confl Lake Creek	confl Brush Creek	45 (10/1 - 4/30) 110 (5/1 - 9/30)	03/17/1980
80CW0124	Eagle River	confl Brush Creek	confl Colorado River	50 (10/1 - 4/30) 130 (5/1 - 9/30)	03/17/1980

Potential for Injury

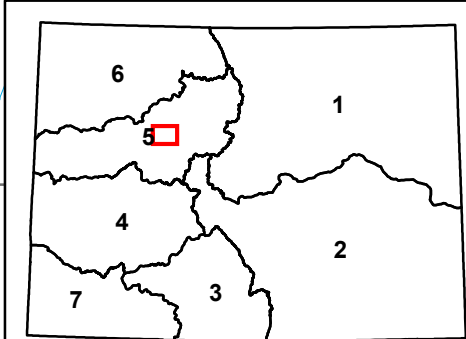
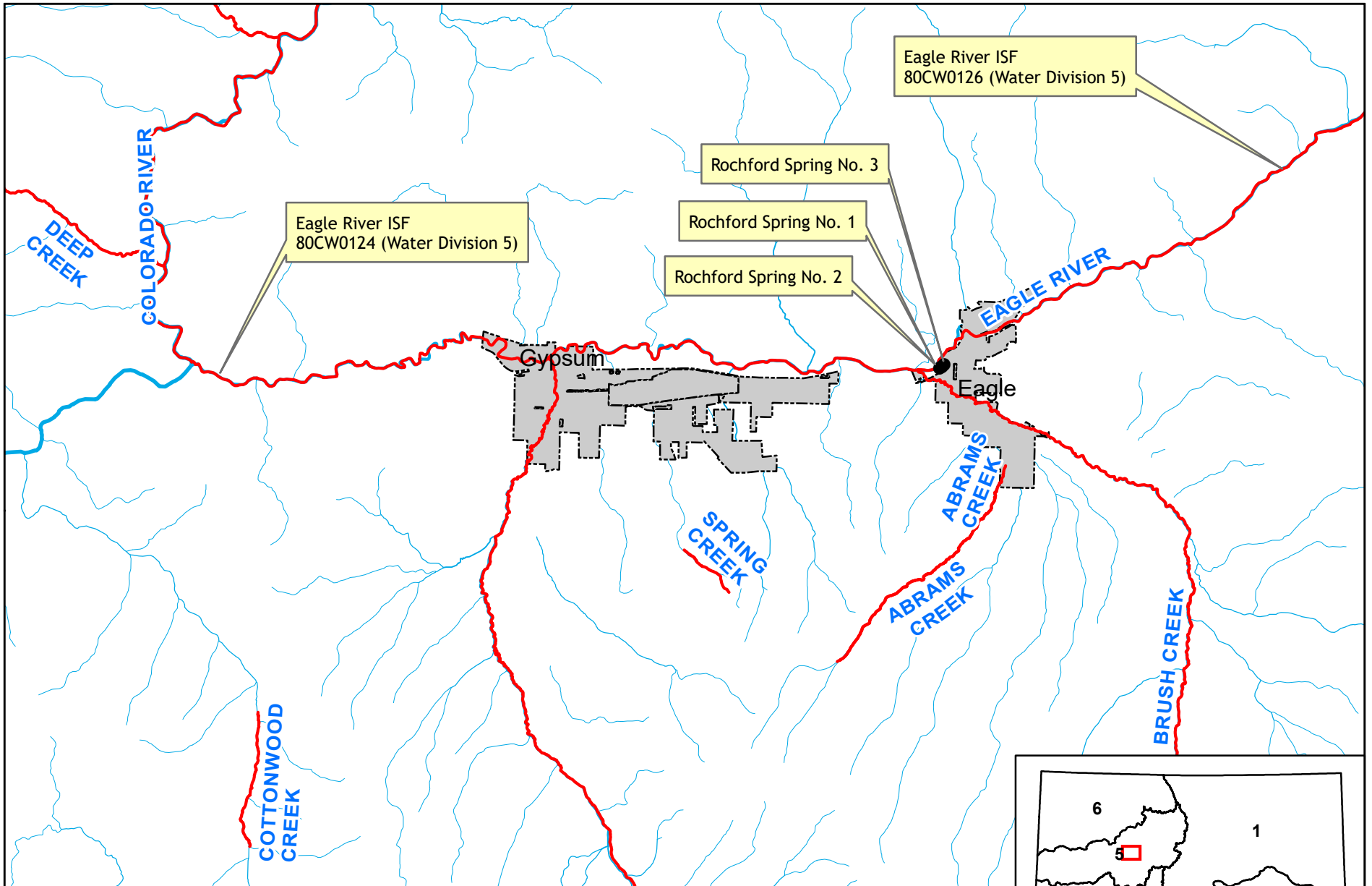
- An exchange will be necessary to operate Applicant's proposed augmentation plan and should be defined clearly with a reference to intervening instream flow water rights.
- The proposed plan for augmentation may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.

Other Objectors

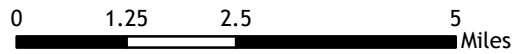
No other Statements of Opposition were filed.

Attorney Representing CWCB

Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at andy.nicewicz@coag.gov, or 720-508-6259.



March 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.p: Statement of Opposition
 Case No. 18CW3199 (Water Division 5)
 William Powell



DIVISION 5 WATER COURT- DECEMBER 2018 RESUME

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3. PURSUANT TO C.R.S., §37-92-302, AS AMENDED, YOU ARE NOTIFIED THAT THE FOLLOWING PAGES COMPRISE A RESUME OF THE APPLICATIONS AND AMENDED APPLICATIONS FILED WITH THE WATER CLERK FOR WATER DIVISION 5 DURING THE MONTH OF DECEMBER 2018. *The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest within the time provided by statute or be forever barred.*

18CW3199 GARFIELD COUNTY; Application for Approval of Plan for Augmentation. Name of Applicant: William Powell, please direct all correspondence to Applicant's attorney: Mary Elizabeth Geiger, Garfield & Hecht, P.C., 901 Grand Ave., Suite 201, Glenwood Springs, CO 81601, (970) 947-1936, megeiger@garfieldhecht.com. Name of structure to be augmented: **Rochford Spring No. 1.** Prior Decrees: Case No. W-1926, originally entered by this Court on November 30, 1973, District Court in and for Water Division No. 5. Location: The spring is located in Tract 47, Section 5, Township 5 South, Range 84 West of the 6th P.M. at a point whence Angle Point No. 4 of said Tract 47 bears South 10°38'10" West 971.16 feet. The location is alternatively described as located at a point in the SE ¼ of the NW ¼ Section 5, Township 5 South, Range 84 West of the 6th P.M., 1,456 feet from the North Section Line and 1,744 feet from the West Section Line (Based on BLM PLSS). UTM X = 342360.98, UTM Y = 4390417.77, NAD 83 Zone 13N. See Exhibit A attached to the Application. Source: Eagle River. Appropriation Date: December 31, 1968. Amount: 0.022 c.f.s., absolute. Use: Irrigation, piscatorial, fire, domestic, and stockwater. Name of structure to be augmented: **Rochford Spring No. 2.** Prior Decrees: Case No. W-1926, originally entered by this Court on November 30, 1973, District Court in and for Water Division No. 5. Location: The spring is located in Tract 47, Section 5, Township 5 South, Range 84 West of the 6th P.M. at a point whence Angle Point No. 4 of said Tract 47 bears South 22°04'00" West 1225.89 feet. The location is alternatively describes as located at a point in the NE ¼ of the NW ¼ Section 5, Township 5 South, Range 84 West of the 6th P.M., 1,294 feet from the North Section Line and 1,939 feet from the West Section Line (Based on BLM PLSS). UTM X = 342421.45, UTM Y = 4390466.03, NAD 83 Zone 13N. See Exhibit A attached to the Application. Source: Eagle River. Appropriation Date: December 31, 1968. Amount: 0.38 c.f.s., absolute. Use: Irrigation, piscatorial, fire, domestic, and stockwater. Name of structure to be augmented: **Rochford Spring No. 3.** Prior Decrees: Case No. W-1926, originally entered by this Court on November 30, 1973, District Court in and for Water Division No. 5. Location: The spring is located in Tract 47, Section 5, Township 5 South, Range 84 West of the 6th P.M. at a point whence Angle Point No. 4 of said Tract 47 bears South 24°23'20" West 1401.82 feet. The location is alternatively describes as located at a point in the NE ¼ of the NW ¼ Section 5, Township 5 South, Range 84 West of the 6th P.M., 1,161 feet from the North Section Line and 2,113 feet from the West Section Line (Based on BLM PLSS). UTM X = 342475.23, UTM Y = 4390505.59, NAD 83 Zone 13N. See Exhibit A attached to the Application. Source: Eagle River. Appropriation Date: December 31, 1968. Amount: 0.44 c.f.s., absolute. Use: Irrigation, piscatorial, fire, domestic, and stockwater. Water Rights to be used for augmentation: Colorado River Water Conservation District Supplies. Applicant has obtained Water Supply Contract No. CW17001 from the Colorado River Water Conservation District (the "River District") for 2.5 acre-feet of annual contract water to augment Applicant's uses of water with regard to the Colorado River. Pursuant to the Contract, the River District will provide releases of augmentation water from the sources of supply described below. References below to the "Water Court" mean the District Court in and for Colorado's Water Division Nos. 5 and 6 as said Divisions are defined in C.R.S. § 37-92-201(1)(e). Wolford Mountain Reservoir. The River District owns and operates Wolford Mountain Reservoir (f/k/a Gunsight Pass Reservoir) which has the following water rights. Case No. 87CW283; Decree Date: November 20, 1989. Name of Structure: Gunsight Pass Reservoir. Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The intersection of the dam axis with the right abutment will occur at a point which bears S. 54°54'20" E. a distance of 3,716.46 feet from the NW Corner of said Section 25. Source: Muddy Creek and its tributaries, all tributary to the Colorado River. Amount: 59,993 acre feet conditional; of this amount, 32,986 acre feet were made absolute for piscatorial and recreational uses by decree entered in Water Court Case No. 95CW251, and the full amount was made absolute for all purposes by decree entered in Water Court Case No. 02CW107. Appropriation Date: December 14, 1987. Use: All beneficial uses, including but not limited to domestic, municipal, agricultural and recreational uses, which uses satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District; use to meet the water requirements of the inhabitants of the River District for all uses, including uses in the Middle Park area;

and use to meet the terms of a lease agreement executed March 3, 1987 between the River District and the City and County of Denver. Case No. 95CW281: Decree Date: August 26, 1997. Name of Structure: Wolford Mountain Reservoir Enlargement. Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point which bears S. 53°24'56" E. a distance of 3,395.51 feet from the NW Corner of said Section 25; the bearing of said dam axis from Sta. 19+35.61 to Sta. 0+00 being S. 75° 28' 29" E. Source: Muddy Creek and its tributaries, all tributary to the Colorado River. Amount: 6,000 acre feet, conditional. Appropriation Date: January 16, 1995. Use: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Project; such uses will be made directly or by substitution, augmentation, or exchange. None of the water stored in the exercise of the right will be delivered directly or by exchange, substitution, or otherwise for use outside of Colorado Water Division No. 5. Case No. 98CW237: Decree Date: July 6, 2000. Name of Structure: Wolford Mountain Reservoir. Legal Description of place of storage: Same as for 95CW281. Source: Muddy Creek and its tributaries, all tributary to the Colorado River. Amount: 30,000 acre feet conditional, with 15,895 acre feet being absolute for recreational and piscatorial and flood control. Appropriation Date: November 17, 1998. Use: Certain of the beneficial uses previously adjudicated for Wolford Mountain Reservoir in Case No. 87CW283, District Court for Colorado Water Division No. 5 (November 20, 1989 Judgment and Decree), and Case No. 95CW281, District Court for Colorado Water Division No. 5 (August 26, 1997 Judgment and Decree). 87CW283: The reservoir will be used to satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District. This will involve all uses, including but not limited to domestic, municipal, agricultural, and recreational uses. The reservoir will also be used to meet the water requirements of the inhabitants of the River District for all uses, including uses in the Middle Park area. 95CW281: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Reservoir Project; such uses will be made directly or by substitution, augmentation, or exchange. Remarks: The Refill Right described herein will be exercised to provide supply for the Western Slope uses of water from Wolford Mountain Reservoir described above, including flood control, other operational purposes, and environmental mitigation and enhancement for the benefit of uses within the District. The Refill Right will not be used in conjunction with the Reservoir capacity (24,000 a.f.) which is allocated for the supply of water to the Denver Board of Water Commissioners under Applicant's contractual relationship with Denver, or the Reservoir capacity (6,000 AF) which is allocated for Colorado River endangered fish releases. PLSS: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point 1,940 feet South of North section line and 2,760 feet East of the West section line of said Section 25. **Statement of plan for augmentation: Nature and Purpose of Plan.** Applicant owns a parcel of land in Eagle County, Colorado, located adjacent to the Eagle River as shown on Exhibit A (the "Property"). The purpose of the plan for augmentation is to protect the irrigation water supply for the Property by augmenting out-of-priority depletions from the Rochford Springs Nos. 1, 2 and 3. Out-of-priority depletions from the Rochford Springs Nos. 1, 2 and 3 will be augmented using augmentation storage water purchased from the Colorado River Water Conservation District as Contract No. CW17001, a copy of which is attached to the Application. **Estimated Water Demands and Depletions.** Uses of water to be augmented under this plan include irrigation use on approximately 1.5 acres of land. Applicant's schedule of monthly diversions and depletions associated with those uses is set forth on Table 1, attached hereto and incorporated herein by reference. The total water demand for Applicant's irrigation use is approximately 3.85 acre-feet per year, with an associated annual consumptive use estimated to be 3.08 acre-feet. Applicant's estimated irrigation demand for 1.5 acres is 3.85 acre-feet per year, diverted during the months of April through October. Applicant's engineers calculated the irrigation consumptive use rate using the Modified Blaney-Criddle methodology (SCS technical Release 21) with the Pochop Borelli & Burnam temperature and growth stage coefficients and elevation adjustment factor, resulting in an estimated consumptive use rate of 2.03 acre-feet per acre. At 2.03 acre-feet per acre, Applicant's total annual consumptive use for 1.5 acres of irrigation is calculated to be 3.08 acre-feet, according to the schedule set forth in Table 1. **Augmentation Requirements.** Table 1 shows the

anticipated schedule of monthly depletions and augmentation requirements for Applicant's water uses. Total annual depletions are expected to be 3.08 acre-feet, including 2.50 acre-feet of potential out-of-priority depletions that may occur under a dry-year river call from downstream senior water rights on the Colorado River. In a dry year during the irrigation season, a river call may occur from mid-June through October. Applicant will augment its out-of-priority depletions with releases of water from the storage water sources identified in Paragraph 5 above, according to the schedule of augmentation requirements set forth in Table 1, including ten percent (10%) for transit losses associated with the delivery of reservoir storage water, Applicant's total contract water purchase obligation under the plan for augmentation is 2.50 acre-feet per year. To satisfy its augmentation requirements, Applicant has obtained Colorado River Water Conservation District Water Supply Contract No. CW17001 for 2.5 acre-feet per year of the River District's Colorado River Supplies. The contracted amount includes 10% of Applicant's augmentation requirements to cover transit losses associated with the delivery of water from the River District's storage water sources. (8 pages).

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of FEBRUARY 2019 to file with the Water Clerk a verified Statement of Opposition setting forth facts as to why this application should not be granted or why it should be granted in part or on certain conditions. A copy of such statement of opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing Fee: \$158.00) KATHY POWERS, Water Clerk, Water Division 5; 109 8th Street, Suite 104 Glenwood Springs, CO 81601.