

Consent Agenda Item 1.c

May 15-16, 2019 Board Meeting

Case No. 19CW3012 (Water Division 4); Double RL Company

Summary of Water Court Application

This is an application for a change of water rights to alternate points of diversion.

Staff Recommendation

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

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water right in Water Division 4 in the Uncompahgre Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
98CW0234	Dallas Creek	confl E & W Forks Dallas Cr	confl Ridgway Reservoir	9 (10/15 - 4/30) 20 (5/1 - 10/14)	07/13/1998

Potential for Injury

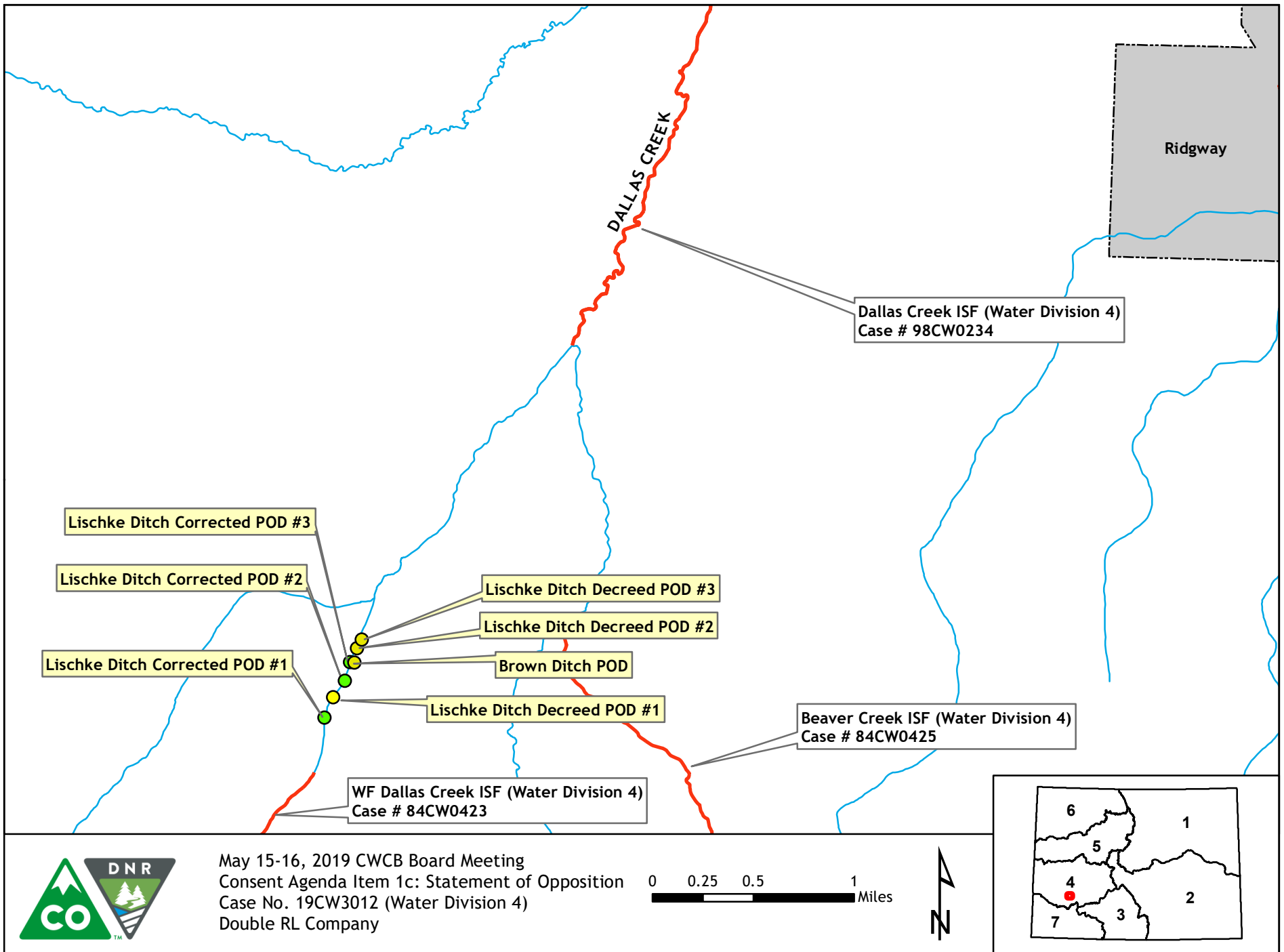
- The proposed change of water rights to alternate points of diversion could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.

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.



IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4 STATE OF COLORADO

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of January 2019. The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows: There has been filed in this proceeding a claim or claims which 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 as provided in the Water Right Determination and Administration Act of 1969, or be forever barred.

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CASE NO. 2019CW3012. (CA1189) (CA1959) (CA2440) (W-445). Double RL Company, c/o Oakley Kelly, Ranch Manager, 5180 Highway 62, Ridgway, Colorado 81432, Phone: (970) 626-5485; E-mail: oakley@rrlranch.com. Attorneys for Applicant: Richard A. Johnson, David F. Bower, Michael S. Davidson, JOHNSON & REPUGGI LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027; Phone: 303-442-1900; Fax: 303-442-0191. Application To Correct Legal Description Of Structure And For A Change Of Water Right To Alternate Points Of Diversion in OURAY COUNTY, Colorado. Name and Description of Water Rights. *Name of Structures.* Lischke Ditch and Brown Ditch (a/k/a Brown Ditch No. 271). *Original Decrees.* The Lischke Ditch was originally decreed on June 12, 1903, in Civil Action No. 1189, Ouray County, Water District 68. Additional water rights and additional points of diversion were decreed for the Lischke Ditch on May 11, 1942, in Civil Action 1959, Ouray County, Water District 68. The legal description of the Lischke Ditch points of diversion were corrected in Case No. W-445, Water Division 4. The Brown Ditch was originally decreed on April 14, 1961, in Civil Action No. 2440, Ouray County, Water District 68, 5th Adjudication. *Decreed Legal Description of Points of Diversion.* The three decreed Lischke Ditch points of diversion are legally described in Case No. W-445 as follows: On the west bank of the west fork of the Dallas River at a point about one-fourth of a mile southwest of the southwest corner of Section 26, Township 45 North, Range 9 West, N.M.P.M. Near the corner line in the southwest corner of Section 26, Township 45 North, Range 9 West, on the East Bank of the West Fork of the Dallas River. About 300 feet North of the second point of diversion on the East Bank of the West Fork of the Dallas River. The headgate of the Brown Ditch is legally described as located on the East bank of the West Fork of Dallas Creek, at a point about 100 feet upstream from the headgate of the Barker Ditch, and the headgate of said Barker Ditch is located on the west bank of said West Fork of Dallas Creek at a point whence the quarter section corner between Sections 23 and 24, Township 45 North, Range 9 West, N.M.P.M. bears North 35°12' East 9,855 feet. *Source.* West Fork of Dallas Creek, tributary to Dallas Creek, tributary to the Uncompahgre River. *Decreed Amounts and Uses.* Lischke Ditch. 6 cfs, absolute, for irrigation. *Priority No. 36A (a/k/a Priority No. 125):* 0.5 cfs. *Priority No. 145A:* 1.5 cfs. *Priority No. 62:* 4.0 cfs. Brown Ditch. 5.0 cfs, absolute, for irrigation. *Dates of Appropriation.* Lischke Ditch. *Priority No. 36A (a/k/a Priority No. 125):* May 1, 1879. *Priority No. 145A:* November 15, 1896. *Priority No. 62:* November 15, 1896. Brown Ditch. July 1, 1920. Correction of Points of Diversion for the

Lischke Ditch. In a recent site visit, Applicant's engineering consultants determined that the actual points of diversion for the Lischke Ditch are located south of their corresponding decreed points of diversion. As a result, Applicant seeks to correct the legal description of the points of diversion for the Lischke Ditch as follows: The corrected location of the first point of diversion is on the West Fork of Dallas Creek, in the SE1/4 NE1/4 of Section 34, Township 45 North, Range 9 West of the N.M.P.M., at a point approximately 1842 feet South of the North section line and 773 feet West of the East section line (Zone 13, NAD83, Easting 251051m, Northing 4221921m). The corrected location of the second point of diversion is on the West Fork of Dallas Creek, in the NE1/4 NE1/4 of Section 34, Township 45 North, Range 9 West of the N.M.P.M., at a point approximately 823 feet South of the North section line and 259 feet West of the East section line (Zone 13, NAD83, Easting 251214m, Northing 4222229m). The corrected location of the third point of diversion is on the West Fork of Dallas Creek, in the NE1/4 NE1/4 of Section 34, Township 45 North, Range 9 West of the N.M.P.M., at a point approximately 327 feet South of the North section line and 114 feet West of the East section line (Zone 13, NAD83, Easting 251264m, Northing 4222378m). The map attached as Exhibit A shows the currently decreed and actual locations of the three points of diversion decreed to the Lischke Ditch. As previously decreed in Civil Action No. 1959, Ouray County, Water District 68, and corrected in Case No. W-445, the Lischke Ditch water right may be diverted at any of its three decreed points of diversion. Change of Point of Diversion for Brown Ditch to Add Alternate Point of Diversion. Applicant also seeks to add an alternate point of diversion for the Brown Ditch water right so that it can be diverted at the Lischke Ditch points of diversion set forth above. There are no decreed instream flow rights between the decreed location of the Brown Ditch point of diversion and the corrected Lischke Ditch points of diversion and the only intervening surface points of diversion are owned by Applicant. Moreover, the change in point of diversion will not result in diversion of the Brown Ditch water right at a greater flow rate or amount of water than was originally decreed to, or that was physically and legally available at, the Brown Ditch headgate. Accordingly, the requested change will not injure the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. Name of Landowner upon which any New or Modified Diversion Structure is Located. The Lischke Ditch and the Brown Ditch are located on land owned by Applicant. 6 pages. **OURAY COUNTY.**