

Consent Agenda Item 1.c

September 18-19, 2019 Board Meeting

Case No. 19CW3063 (Water Division 5); M&M Industries Inc.

Summary of Water Court Application

Application for Simple Change in Surface Point of Diversion.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in July 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 rights in Water Division 5 in the Blue River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
87CW0297	Blue River	confl Boulder Creek	confl Slate Creek	Varies from 70-125 (dates vary)	10/02/1987
87CW0298	Blue River	confl Slate Creek	Inlet Green Mtn Res	Varies from 85-125 (dates vary)	10/02/1987
77W3646	Boulder Creek	headwaters	confl Blue River	3 (10/1 - 4/30) 6 (5/1 - 9/30)	01/19/1977
05CW0264 [^]	Boulder Creek & Blue River	hdgt Peabody #1 Ditch	confl Inlet Green Mtn Res	Varies from 0.04-3.51 (dates vary)	05/23/1904 and 05/15/1915

[^] Donated/Acquired Water Right

Potential for Injury

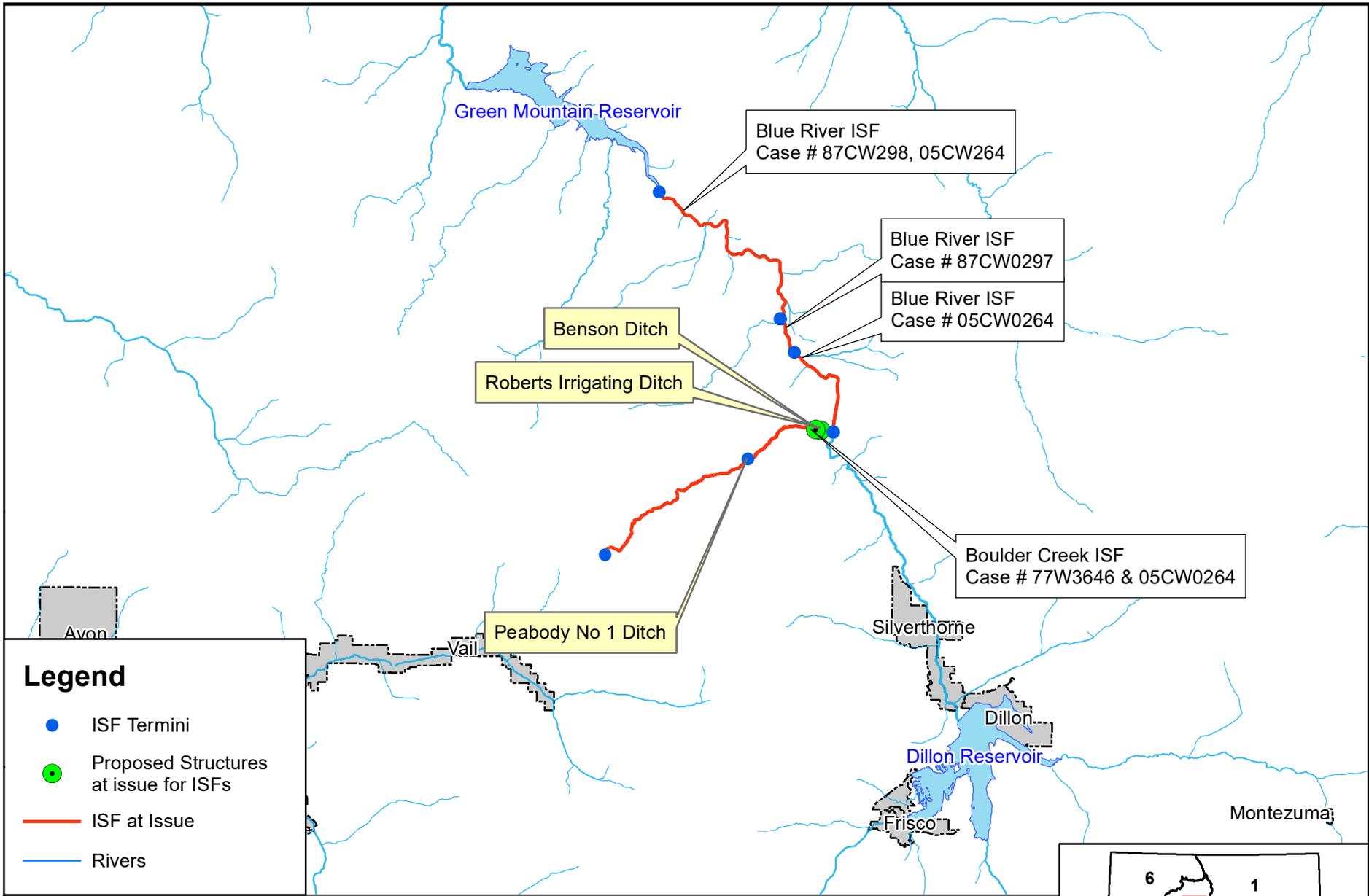
- Applicant requests to move the point of diversion for its senior water rights to an upstream location within the CWCB's instream flow water rights on Boulder Creek decreed in Case Nos. 77W3646 and 05CW264. The requested upstream move could injure these intervening instream flow water rights.
- Terms 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 rights.
- Pursuant to C.R.S 37-92-305(3.5)(II), "Simple change in surface point of diversion does not include a change of point of diversion from below or within a stream reach for which there is an intervening...in-stream flow right to an upstream location within or above that reach."

Other Objectors

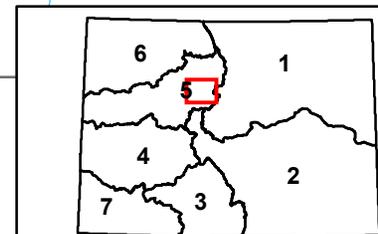
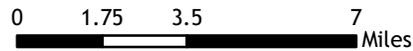
No other Statements of Opposition were filed.

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.



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 Case No. 19CW3063 (Water Division 5)
 M&M Industries Inc.



DIVISION 5 WATER COURT- MAY 2019 RESUME

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 MAY 2019. *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.*

19CW3063 M&M Industries Inc., 33205 Highway 9, Silverthorne, CO 80498, 970-389-2220; P. Andrew Jones, #29076, Lawrence Jones Custer Grasmick LLP, 5245 Ronald Reagan Blvd., Suite 1, Johnstown, Co 80534. Application For Simple Change In Surface Point Of Diversion Pursuant To § 37-92-305(3.5), C.R.S. 2. Decreed water right for which change is sought: 2.1. Name of structure: Roberts Irrigating Ditch, Ditch No. 78, Priority No. 78. 2.1.1. Date of original and all relevant subsequent decrees: C.A. 1710, District Court, **Summit County**, decreed on October 25, 1937. Consumptive use quantified and partial change of use decreed in Case No. 96CW370, District Court, Water Division 5, decreed December 10, 1998. 2.1.2. Legal description of structure as described in most recent decree that adjudicated the location: The decreed point of diversion is at the headgate located on the North Bank of Boulder Creek, at a point whence the NE corner of Section 5, Township 4 South, Range 78 West, 6th P.M. bears North 3°38' East, 863 feet. 2.1.3. Decreed source of water: **Boulder Creek, tributary to Blue River** 2.1.4. Appropriation Date: December 31, 1905. 2.1.5. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): 1.4 c.f.s., absolute. Applicant owns 1.302 c.f.s., absolute. 2.1.6. Decreed use or uses: Domestic 2.1.7 Amount of water that applicant intends to change: Absolute 1.182 c.f.s. Note: .12 c.f.s. of Applicant's 1.302 c.f.s. was dedicated to augmentation plan and abandoned to the stream in 96CW370. 2.2 Name of structure: Roberts Irrigating Ditch, Ditch No. 210, Priority No. 219. 2.2.1. Date of original and all relevant subsequent decrees: C.A. 1709, District Court, Summit County, decreed on October 26, 1937. Consumptive use quantified and partial change of use decreed in Case No. 96CW370, District Court, Water Division 5, decreed December 10, 1998. 2.2.2. Legal description of structure as described in most recent decree that adjudicated the location: The decreed point of diversion is at the headgate located on the North Bank of Boulder Creek, at a point whence the NE corner of Section 5, Township 4 South, Range 78 West, 6th P.M. bears North 3°38' East, 863 feet. 2.2.3. Decreed source of water: Boulder Creek, tributary to Blue River. 2.2.4. Appropriation Date: April 1, 1895. 2.2.5. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): 9 c.f.s., absolute. Applicant owns 6.458 c.f.s., absolute. 2.2.6. Decreed use or uses: Irrigation. 2.2.7. Amount of water that applicant intends to change: Absolute 5.858 c.f.s. Note: .6 c.f.s. of Applicant's 6.458 c.f.s. was dedicated to augmentation plan and abandoned to the stream in 96CW370. 3. Detailed description of proposed change in a surface point of diversion: The Roberts Irrigating Ditch has been affected by construction in the vicinity of the ditch, increasing seepage and making water delivery difficult. Applicant proposes to move the point of diversion for Applicant's interest in the the Roberts Irrigating Ditch priorities 78 and 219 upstream approximately 700 feet on Boulder Creek to the existing diversion structure known as the Benson Ditch. There are no intervening rights or sources of inflow. Changing the point of diversion will not result in a diversion of a greater flow rate or amount of water than is decreed to the right or than is available at the existing decreed point of diversion, or injuriously affect the owners of or persons entitled to use water under a vested water right or decreed conditional water right. A map of the old and proposed new points of diversion is attached hereto as Exhibit "A." 4. Location of the new surface point of diversion: 4.1. PLSS Format: (from previous decrees) Northerly on the bank of Boulder Creek in the NE1/4 of the NE1/4, Section 5, Township 4 South, Range 78 West,

**Attachment
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6th P.M. at a point which bears South 43°16'13" West 1061.5 feet from the NE corner of said Section 5. 4.2. UTM Format: Easting 402086, Northing 4399293, Zone 13. Location established by DWR mapping. 5. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed. The applicant must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so. United States Forrest Service, 680 Blue River Parkway, Silverthorne CO 80498. This resume consists of four (4) pages.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of JULY 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: \$192.00) KATHY POWERS, Water Clerk, Water Division 5; 109 8th Street, Suite 104 Glenwood Springs, CO 81601.