

**Consent Agenda Item 1.d**

September 18-19, 2019 Board Meeting

Case No. 19CW3070 (Water Division 5); Neal Shear and Jacqueline Shear

**Summary of Water Court Application**

Application for storage water right, appropriative right of exchange, change of water right and 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 August 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 Roaring Fork River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
75W2656	Hunter Creek	confl No Name Creek	confl Roaring Fork River	14 (1/1 - 12/31)	2/26/1975
76W2938	Woody Creek	headwaters	confl Roaring Fork River	6 (1/1 - 12/31)	1/14/1976
76W2948	Roaring Fork River	confl Difficult Creek	confl Maroon Creek	32 (1/1 - 12/31)	1/14/1976
79CW190*	Hunter Creek	confl No Name Creek	confl Roaring Fork River	16 (1/1 - 12/31)	1/31/1979
80CW18^	Hunter Creek and Roaring Fork River	various	confl Colorado River	0.005 - 15.3 (varies)	varies between 1946-1967
80CW61^	Hunter Creek	Hunter Creek Flume and Pipeline diversion	confl Roaring Fork River	15 (1/1 - 12/31)	6/10/1886
80CW62^	Hunter Creek and Roaring Fork River	Red Mountain Ditch headgate	confl Colorado River	0.5 (1/1 - 12/31)	5/15/1884
85CW639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/8/1985
85CW646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/8/1985
10CW184^	Roaring Fork River	confl Maroon Creek	confl Owl Creek	3.54 (5/1 - 10/31)	6/30/1904

10CW184^	Roaring Fork River	confl Owl Creek	confl Fryingpan River	0.15-0.89 (varies)	6/30/1904
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\* Increased

^ Donated/Acquired Water Right

**Potential for Injury**

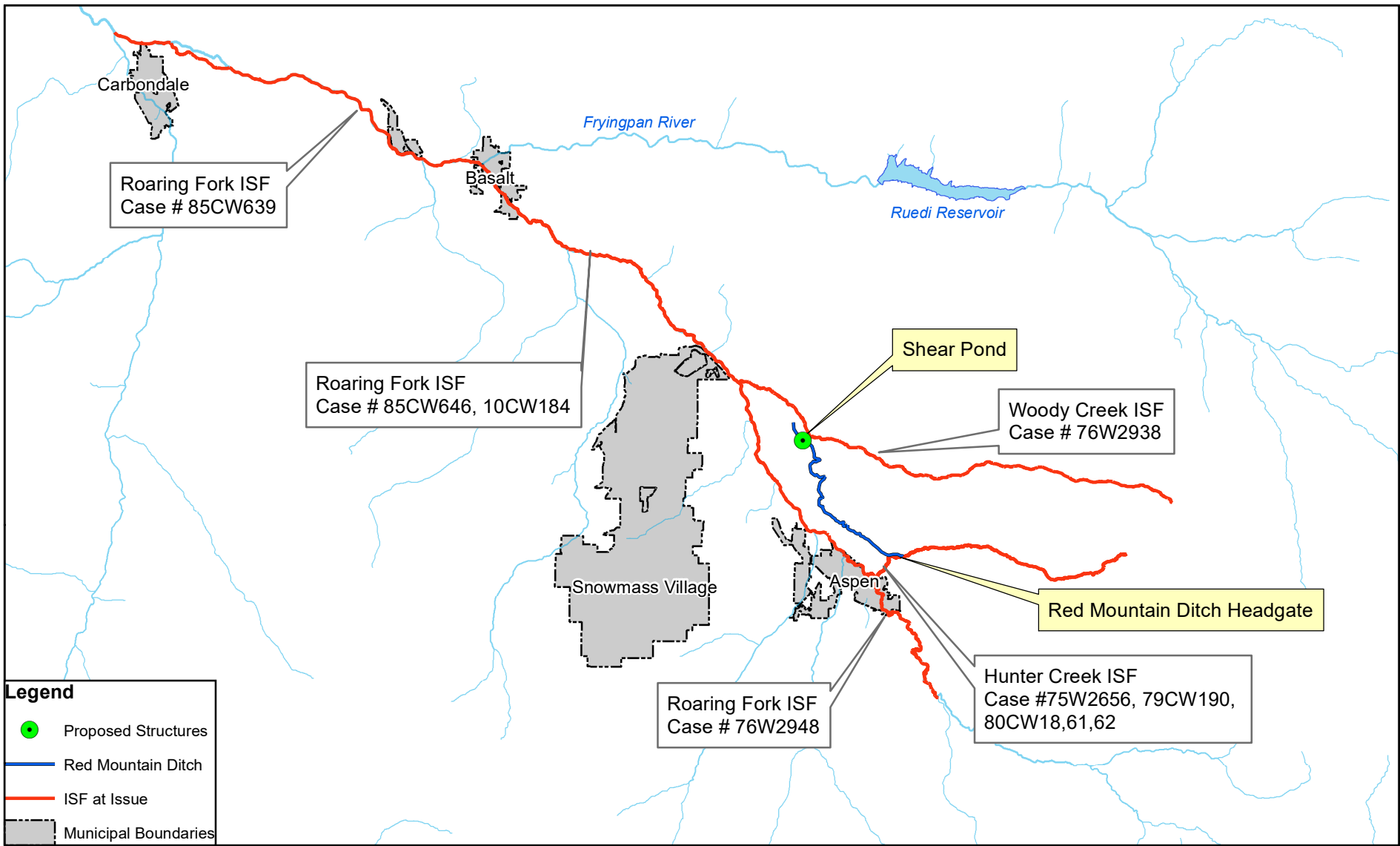
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB’s instream flow water rights.
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB’s instream flow water rights. The CWCB also hold water rights in the Red Mountain Ditch that is the subject of the change in this case.

**Other Objectors**

A Statement of Opposition was also filed by City of Aspen.

**Attorney Representing CWCB**

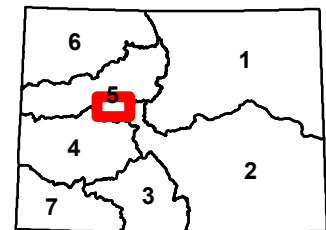
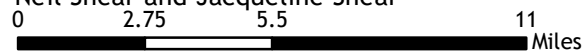
Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at [andy.nicewicz@coag.gov](mailto:andy.nicewicz@coag.gov), or 720-508-6259.



**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

September 17-18, 2019 CWCB Board Meeting  
 Consent Agenda Item 1.d Statement of Opposition  
 Case No. 5-19CW3070, Application of  
 Neil Shear and Jacqueline Shear



## DIVISION 5 WATER COURT- JUNE 2019 RESUME

**5. 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 JUNE 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.*

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**19CW3070 PITKIN COUNTY – TRIBUTARIES TO WOODY CREEK, TRIBUTARY TO ROARING FORK RIVER AND COLORADO RIVER.** Neal Shear and Jacqueline Shear c/o Kevin L. Patrick, Esq. and John M. Sittler, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave., Basalt, CO 81621, (970) 920-1030. APPLICATION FOR STORAGE WATER RIGHT, APPROPRIATIVE RIGHT OF EXCHANGE, CHANGE OF WATER RIGHT AND PLAN FOR AUGMENTATION.

**First Claim (Storage):** Shear Pond.

Legal Description: NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, Section 23, Township 9 South, Range 85 West, of the 6<sup>th</sup> P.M., 1,825 feet from the South section line and 880 feet from the West section line. Source: Run-off and precipitation occurring on-site, tributary to Woody Creek, Roaring Fork River, and Colorado River via Red Mountain Ditch, Priority No. 205: SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, Section 5, Township 10 South, Range 84 West, of the 6<sup>th</sup> P.M., 659 feet from the South section line and 763 feet from the West section line. A map of Red Mountain Ditch, diversion structure for filling Shear Pond, is on file with the court as Exhibit B. Date of Appropriation: May 25, 2002 by survey, development of pond design, formulation of intent to appropriate water to the uses claimed and construction of pond. Date applied to beneficial use: September 28, 2004. Amount and uses: 0.401 acre-feet, inclusive of recycling system, absolute for aesthetic, piscatorial, wildlife, recreation, fire protection and irrigation purposes. Rate of diversion: natural precipitation and run-off and 0.004 c.f.s. of Applicants' 0.375 c.f.s. of Red Mountain Ditch, Priority No. 205, will be stored to offset evaporative losses. Surface area high water line: 0.08 acres. Max dam height: 10 feet. Dam length: 90 ft. Total capacity: 0.401 acre-feet (all active). **Second Claim (Exchange):** Shear Appropriative Exchange. Legal Description: Downstream terminus: The headgate and/or reservoir release points described for the water rights owned or controlled by the BWCD described in paragraph 22 of Application. Upper exchange terminus: NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, Section 23, Township 9 South, Range 85 West of the 6<sup>th</sup> P.M., 785 feet from the North section line and 1,149 feet from the West section line. A map of exchange reach is on file with the court as Exhibit C. Source: water rights owned or controlled by the BWCD described in paragraph 22 of Application. Date of Appropriation: June 28, 2019 by field inspection, formulation of intent and to apply water to beneficial use, and application to BWCD for Inclusion and Allotment Contract. Amount and uses: 0.0006 c.f.s. conditional for exchange in plan for augmentation described in Third Claim of Application. **Third Claim (Aug Plan):** Structure to be augmented: Shear Pond. Legal Description: See First Claim. Legal descriptions of water rights used for augmentation: Red Mountain Ditch, Priority No. 205: See First Claim; BWCD Allotment Contract for 0.08 acre-foot: Green Mountain Reservoir located in the NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, Section 15, Township 2 S., Range 80 W. of the 6<sup>th</sup> P.M., 2312 feet from the South section line and 992 feet from the East section line; Ruedi Reservoir located in the NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, Section 18, Township 8 South, Range 84 West, of the 6<sup>th</sup> P.M., 324 feet from the North section line and 984 feet from the West section line; Troy Ditch located in the NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, Section 14, Township 8 S., Range 84 W. of the 6<sup>th</sup> P.M., 285 feet from the South section line and 967 feet from the East section line; Edith Ditch located in the SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, Section 12, Township 8 S., Range 84 W. of the 6<sup>th</sup> P.M., 326 feet from the South section line and 981 feet from the West section line; Robinson Ditch located in the NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, Section 11, Township 8 S., Range 87 W. of the 6<sup>th</sup> P.M., 2307 feet from the South section line and 2309 feet from the East section line. A complete statement of the plan for augmentation is included in the Application, on file with the court. Calculations are included in Tables 1 and 2, on file with the court. **Fourth Claim (Change of Water Right):** Red Mountain Ditch, Priority No. 205, as described in First and Third Claims. Amount for change: 0.004 c.f.s. Proposed change: Change 0.004 c.f.s. of Applicant's 0.375 c.f.s. from irrigation use to augmentation for evaporative losses from Shear

Pond and its recycling system described in the plan for augmentation and in more detail in the Application on file with the court. A map of water rights and place of use is on file with the court as Exhibit A. Applicants own the land where water rights are located and where water is or will be put to beneficial use.

**YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of AUGUST 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.**