

Consent Agenda Item 1.g

March 11-12, 2020 Board Meeting

Case No. 19CW3098 (Water Division 4); Board of County Commissioners of Ouray County,
Ouray County Water Users Association, Tri-County Water Conservancy District

Summary of Water Court Application

Combined application for conditional water rights (surface), alternate diversion point, reservoir use enlargement and conditional appropriative right or exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2020 to protect CWCB's instream flow water rights and to protect CWCB's exclusive authority to hold instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water rights in Water Division 4 in the Lower Gunnison and Uncompahgre River Watersheds, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
84CW0425 (Div. 4)	Beaver Creek	headwaters in vicinity	confl EF Dallas Creek	1.5 (1/1 - 12/31)	05/04/1984
06CW0166 (Div. 4)	Cottonwood Creek	hdgt Hawkins Ditch	confl Roubideau Creek	3.6 (4/1 - 6/15)	01/25/2006
84CW0420 (Div. 4)	Cow Creek	confl Wildhorse Creek	hdgt div near Forest Service bndry	18 (4/1 - 7/31) 5 (8/1 - 3/31)	05/04/1984
98CW0234 (Div. 4)	Dallas Creek	confl E & W Forks Dallas Creek	confl Ridgway Reservoir	9 (10/15 - 4/30) 20 (5/1 - 10/14)	07/13/1998
05CW0150 (Div. 4)	Dry Creek	confl E & W Forks Dry Creek	hdgt Project canal & siphon	7.3 (4/1 - 6/14) 3 (6/15 - 7/31) 1.2 (8/1 - 2/29) 3 (3/1 - 3/31)	01/25/2005
84CW0424 (Div. 4)	East Fork Dallas Creek	confl Wilson Creek	hdgt Doc Wade div	5 (10/1 - 2/29) 10 (3/1 - 9/30)	05/04/1984
05CW0151 (Div. 4)	East Fork Dry Creek	confl Beaver Dams Creek	confl West Fork Dry Creek	3.6 (4/1 - 6/14) 1.6 (6/15 - 7/31) 0.6 (8/1 - 2/29) 1.6 (3/1 - 3/31)	01/25/2005

06CW0167 (Div. 4)	East Fork Spring Creek	headwaters in vicinity	confl Spring Creek	1.8 (4/1 - 10/31) 1.6 (11/1 - 3/31)	01/25/2006
05CW0251 (Div. 4)	Escalante Creek	confl N Fk Escalante Creek	hdgt Captain H A Smith Ditch	8.2 (4/1 - 6/14) 4 (6/15 - 7/31) 1.5 (8/1 - 2/28) 4 (3/1 - 3/31)	01/25/2005
10CW0184 (Div. 4)	Little Dominguez Creek	Wilderness Area boundary	confl Big Dominguez Creek	9999 (1/1 - 12/31)	05/19/2010
06CW0169 (Div. 4)	Middle Fork Spring Creek	headwaters in vicinity	confl Spring Creek	3.5 (4/1 - 10/31) 1.5 (11/1 - 3/31)	01/25/2006
84CW0422 (Div. 4)	Nate Creek	headwaters in vicinity	confl Cow Creek	2 (1/1 - 12/31)	05/04/1984
84CW0421 (Div. 4)	Owl Creek	headwaters in vicinity	confl Cow Creek	1.5 (1/1 - 12/31)	05/04/1984
04CW0161 (Div. 4)	Potter Creek	BLM-USFS boundary	confl Roubideau Creek	4 (4/1 - 6/15) 1.8 (6/16 - 7/31) 1.4 (8/1 - 2/29) 1.8 (3/1 - 3/31)	01/28/2004
04CW0162 (Div. 4)	Roubideau Creek	confl Moore Creek	BLM boundary	21 (4/1 - 6/15) 5 (6/16 - 7/31) 1.9 (8/1 - 2/29) 5 (3/1 - 3/31)	01/28/2004
04CW0163 (Div. 4)	Spring Creek	confl E & M Fks Spring Creek	hdgt Kenton Ditch	5.3 (4/1 - 6/15) 2.6 (6/16 - 7/31) 0.9 (8/1 - 3/31)	01/28/2004
98CW0222 (Div. 4)	Uncompahgre River	Highway 62 bridge	confl Ridgway Res	20 (10/15 - 4/30) 65 (5/1 - 10/14)	07/13/1998
84CW0423 (Div. 4)	West Fork Dallas Creek	headwaters in vicinity	hdgt Burkhardt Eddy div	2.5 (1/1 - 12/31)	05/04/1984
05CW0155 (Div. 4)	West Fork Dry Creek	confl Grays Creek	confl East Fork Dry Creek	3.4 (4/1 - 6/14) 0.85 (6/15 - 7/31) 0.3 (8/1 - 2/29) 0.85 (3/1 - 3/31)	01/25/2005
06CW0173 (Div. 4)	West Fork Spring Creek	headwaters in vicinity	confl Spring Creek	1.4 (4/1 - 10/31) 0.8 (11/1 - 3/31)	01/25/2006

Potential for Injury

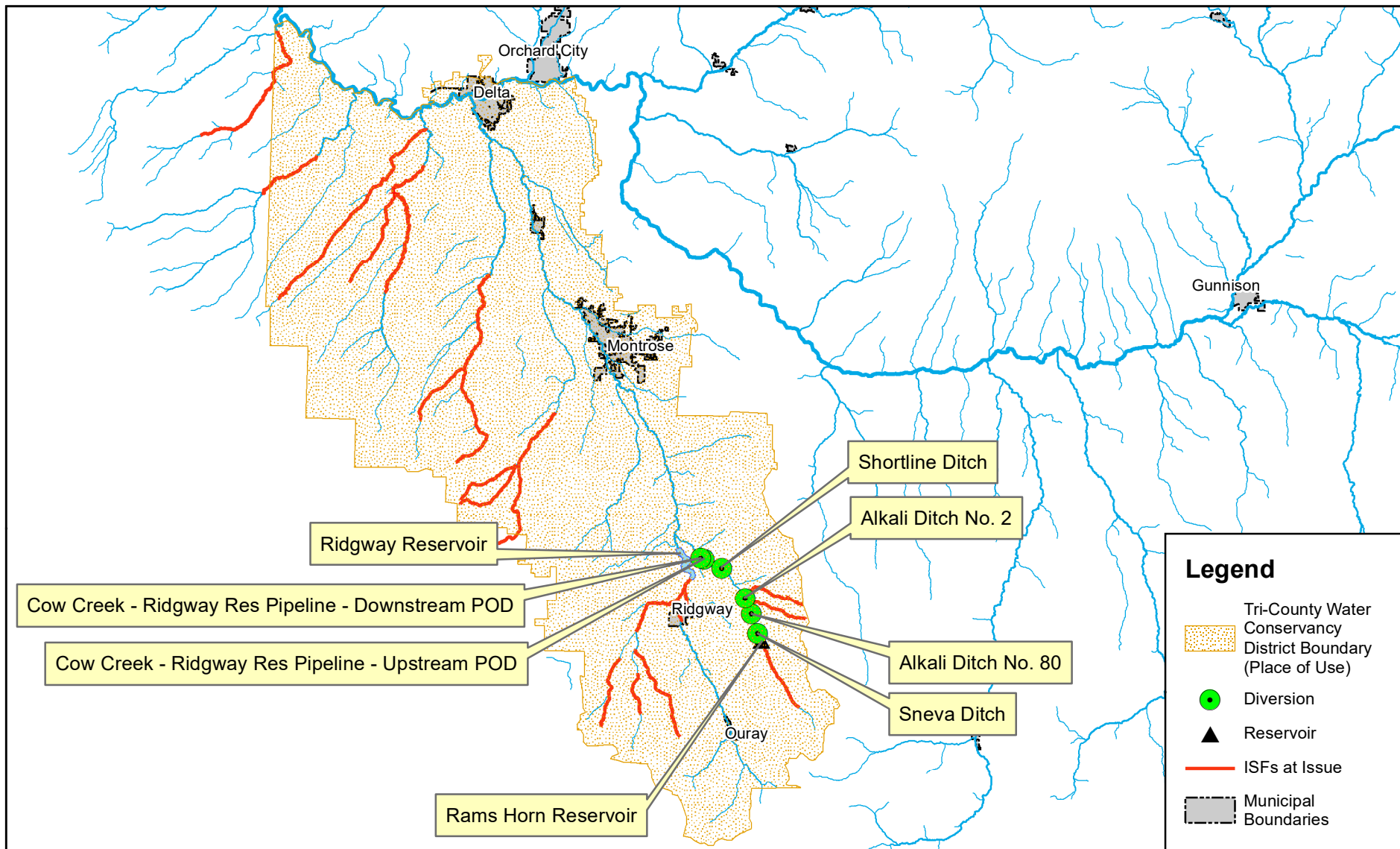
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.
- The claim for alternate points of diversion is unclear and could result in injury to the CWCB's instream flow water rights.
- The Applicant's proposed storage right will inundate the CWCB's instream flow water right on Cow Creek, and may require review pursuant to the Inundation Rule 7 of the CWCB Rules Concerning the Colorado Instream flow and Natural Lake Level Program (ISF Rules).
- The proposed uses of "streamflow enhancement" and "aquatic life including improving water quality for aquatic habitat in cooperation with the CWCB" appear to invoke CWCB's exclusive authority to hold instream flow water rights. Applicant will need an agreement with CWCB pursuant to ISF Rule 6 for any instream flow use of the water.
- The application does not present sufficient information to fully evaluate the extent to which the Board's instream flow rights may be injured.

Other Objectors

Statements of Opposition were also filed by: Broken Arrow Ranch, Inc., Enchanted Mesa Properties, Inc., Chaffee Creek, and Telluray Ranch Corporation; Cary L. Denison and Blossom Z. Denison; Colorado Division of Parks and Wildlife and Parks and Wildlife Commission ("CPW"); Colorado River Water Conservation District; Double RL Company; SIR North, LLC. and SIR South, LLC.; Uncompahgre Valley Water Users Association (in support of Application); Uncompahgre Watershed Partnership; Wolf Land Company, LP and Wolf Cattle Company, Inc.

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.

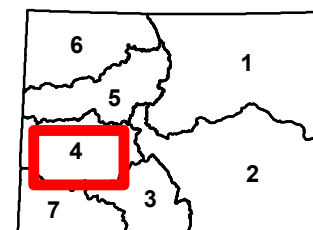


COLORADO
Colorado Water
Conservation Board

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting
 Consent Agenda Item 1.g. Statement of Opposition
 Case No. 19CW3098 (Division 4)
 Ouray County, et al.

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**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 December 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.

CASE NO. 2019CW3098. Applicants: Board of County Commissioners of Ouray County, c/o Carol Viner, 1104 S. Townsend Ave, Montrose, CO 81401. Tri-County Water Conservancy District, c/o Aaron Clay, P.O. Box 38, Delta, CO 81416; Ouray County Water Users Association, c/o Martha Whitmore, P.O. Box 646, Ouray, CO

81427. COMBINED APPLICATION FOR CONDITIONAL WATER RIGHTS (SURFACE), ALTERNATE DIVERSION POINT, RESERVOIR USE ENLARGEMENT AND CONDITIONAL APPROPRIATIVE RIGHT OF EXCHANGE. I. First Claim:

Surface Diversion for the Cow Creek – Ridgway Reservoir Pipeline. Name of structure: Cow Creek - Ridgway Reservoir Pipeline; Legal description: See Exhibits B and C on file with the Court; Source: Cow Creek, Date of appropriation: November 20, 2019; How appropriation was initiated: On the ground site visit and survey by GPS by Engineer; Board of County Commissioners of Ouray County, Colorado (Ouray County) Resolution Dated December 10, 2019; Tri-County Water Conservancy District (Tri-County) Board of Directors Resolution dated November 20, 2019; Application in Division 4 Water Court; Ouray County Water Users Association (OCWUA) affirmative vote of its members on or about December 18, 2019 and the applicants' intent to and actual appropriation of the water contemplated in this application for beneficial purposes; Date water applied to beneficial use: N/A; Amount claimed in cubic feet per second: Conditional 20 cfs; List All Uses or Proposed Uses: Storage, Augmentation, Exchange, Piscatorial, Municipal, Irrigation, Domestic, Industrial, Commercial, Reuse, Aquifer Recharge, Streamflow Enhancement, Hydropower Generation and Augmentation, Aquatic life including improving water quality for aquatic habitat in cooperation with the Colorado Water Conservation Board; Number of acres historically irrigated 100,300 acres; proposed to be irrigated 100,300 acres. Only historically irrigated lands will be irrigated, as generally depicted on Exhibit D on file with the Court. The water claimed in this application will be used to supplement or augment historically irrigated lands, and lands of downstream senior water rights holders. Applicant intends to use this water right to supplement irrigation on an area of land already irrigated under another water right; Legal description of irrigated acreage is as shown on Exhibits C and D on file with the Court; Place of Use is Ouray County, Montrose County, and Delta County, as shown on Exhibit D on file with the Court; Names and addresses of owners or reputed owners of the land upon which the structures are located is as shown on Exhibit A on file with the Court. Remarks or any other pertinent information: Due to tunneling and potential geotechnical uncertainty, the applicants are requesting the point of diversion to be located along an approximately

2,000-foot reach of Cow Creek between two points as described above and shown on Exhibit C on file with the Court to allow flexibility in design and construction of the pipeline project to avoid future changes to the point of diversion. II. Second Claim: Alternate Points of Diversion for the Cow Creek – Ridgway Reservoir Pipeline Project. Name of structure: Cow Creek - Ridgway Reservoir Pipeline; Legal description of each point of diversion: The Alternative Points of Diversion for the Cow Creek Ridgway Reservoir Pipeline Project, including Ditch Name, Location, and Landowner are provided in Exhibits A, B and C on file with the Court. III. Third Claim: Ram's Horn Reservoir Use Enlargement. Name of Reservoir: Ram's Horn Reservoir; Legal description of location of dam centerline: See Exhibits B and C on file with the Court; Source: Cow Creek tributary to the Uncompahgre River; If filled from a ditch: N/A; Date of appropriation: November 20, 2019; How appropriation was initiated: On the ground site visit by Engineer to reservoir and dam vicinity, mapping of reservoir and dam site from high resolution LIDAR survey information, initial preliminary geotechnical evaluation; Board of County Commissioners of Ouray County, Colorado (Ouray County) Resolution Dated December 10, 2019; Tri-County Water Conservancy District (Tri-County) Board of Directors Resolution dated November 20, 2019; Application in Division 4 Water Court; Ouray County Water Users Association (OCWUA) affirmative vote of its members on or about December 18, 2019 and the applicants' intent to and actual appropriation of the water contemplated in this application for beneficial purposes; Date water applied to beneficial use: N/A; Amount claimed: Conditional 25,349.15 (acre feet); List All Uses or Proposed Uses: In addition to the currently decreed conditional uses of: Irrigation, Domestic, Municipal, Industrial and Flood Control, the applicants request a 2019 priority for the following additional uses: Flow Stabilization, Augmentation, Exchange, Aquifer Recharge, Reuse, Streamflow Enhancement and Augmentation (for aquatic life including improving water quality for aquatic habitat predicated upon approval from the Colorado Water Conservation Board) and Piscatorial Use in the Reservoir. These uses are limited by the terms of prior diligence decrees; Number of acres historically irrigated 100,300 acres; proposed to be irrigated 100,300 acres; Applicant intends to use this water right to supplement irrigation on an area of land already irrigated under another water right; Legal description of irrigated acreage. Irrigation within the Tri-Counties of Ouray, Montrose, and Delta is already a decreed use. Applicants seek, in the alternative, a 2019 water right for irrigation in Ouray, Montrose, and Delta Counties through direct reservoir release, augmentation or exchange. The water right decreed herein will be used throughout Ouray County for augmentation, exchange, irrigation, domestic, and municipal uses. See Exhibit D on file with the Court; Surface area of highwater line: 10,247,500 Square Feet; Vertical height of dam: 260 (feet); Length of dam: 720 (Lidar Data) feet. Dam height and length are approximate and subject to change based on final design and construction requirements; Total capacity of reservoir 25,349.15 (acre feet); Names and addresses of owners or reputed owners of the land upon which the structures are located is as shown on Exhibit A on file with the Court. IV. Fourth Claim: Conditional Appropriative Right of Exchange. Applicant seeks three appropriative rights of exchange: A. The Cow Creek Exchange located on Cow Creek between the upstream terminus at Ram's Horn Reservoir and the downstream terminus located at the confluence of Cow Creek and the Uncompahgre River; B. The Uncompahgre River Exchange located on the Uncompahgre River between the upstream terminus at the confluence of Canyon Creek and the Uncompahgre River (City of Ouray) and the downstream terminus at confluence of Cow Creek and the Uncompahgre River; and C. Dallas Creek Exchange located on Dallas Creek from the upstream terminus at the confluence of the East and West Forks of Dallas Creek and the downstream terminus at the confluence of Dallas

Creek and the Uncompahgre River. The locations of the exchanges are shown on see Exhibit E on file with the Court and the exchange upstream and downstream termini are described in Exhibit B on file with the Court. The purpose of the exchanges are to allow the out-of-priority diversion, withdrawal, depletion, and storage of water for structures located in the Cow Creek, Upper Uncompahgre and Dallas Creek Basins by releasing water from Ridgway Reservoir and/or Ram's Horn Reservoir as a substitute source for water rights calls emanating from structures located downstream of the confluence of Cow Creek and the Uncompahgre River; The flow rates of the Exchanges are as follows: A. Cow Creek Exchange is 30 cfs conditional; B. Uncompahgre River Exchange is 174 cfs conditional; C. Dallas Creek Exchange is 35 cfs conditional; The appropriation date of the exchange: 11/20/2019; How appropriation was initiated: On the ground site visits by Engineer; Board of County; Commissioners of Ouray County, Colorado (Ouray County) Resolution Dated December 10, 2019; Tri-County Water Conservancy District (Tri-County) Board of Directors Resolution dated November 20, 2019; Application in Division 4 Water Court; Ouray County Water Users Association (OCWUA) affirmative vote of its members on or about December 18, 2019 and the applicants' intent to and actual appropriation of the water contemplated in this application for beneficial purposes.

DELTA, MONTROSE AND OURAY COUNTIES.

YOU ARE FURTHER NOTIFIED THAT you have until the last day of February, 2020 to file with the Water Clerk a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at www.courts.state.co.us). DARLEEN CAPPANNOKEEP, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401