

**Consent Agenda Item 1.a**

January 24-25, 2022 Board Meeting

Case No. 21CW0005 (Water Division 5); Summit Land Co.

**Summary of Water Court Application**

Application for Change of Water Right.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in December 2021 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
W-3646(1977)	Boulder Creek	headwaters in vicinity	confl Blue River	3 (10/1 - 4/30) 6 (5/1 - 9/30)	01/19/1977
87CW0297	Blue River	confl Boulder Creek	confl Slate Creek	70 (11/1 - 2/29) 78 (3/1 - 3/31) 90 (4/1 - 4/30) 125 (5/1 - 8/31) 90 (9/1 - 10/31)	10/02/1987
87CW0298	Blue River	confl Slate Creek	inlet Green Mountain Reservoir	85 (12/1 - 2/29) 90 (3/1 - 4/30) 125 (5/1 - 9/30) 90 (10/1 - 11/30)	10/02/1987

**Potential for Injury**

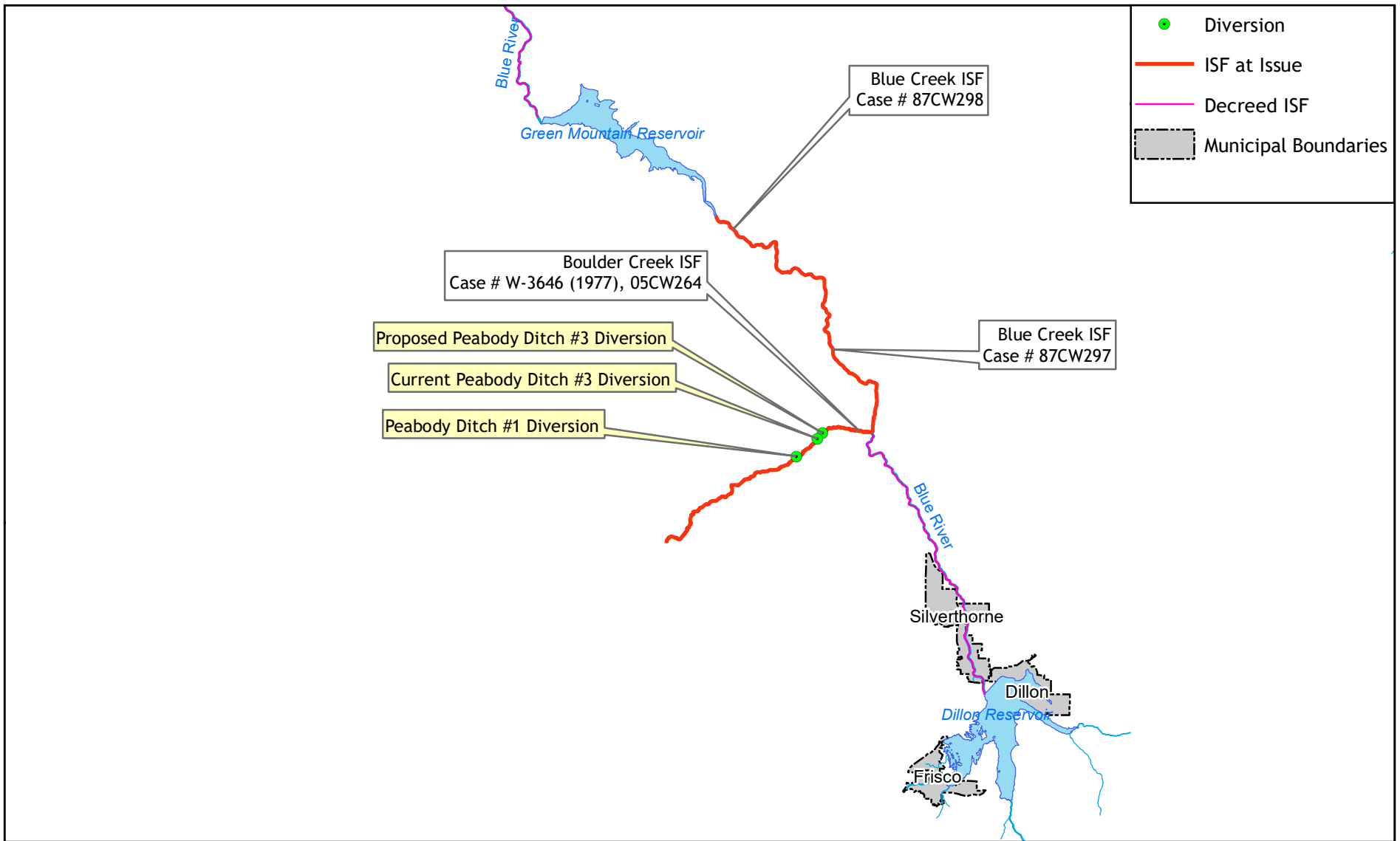
- The proposed change of water rights could cause an expansion of use and could alter the time, place, and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the decree will not cause injury to the CWCB's instream flow water rights and flows protected under Case No. 05CW264 (CWCB's Peabody #1 Ditch 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.

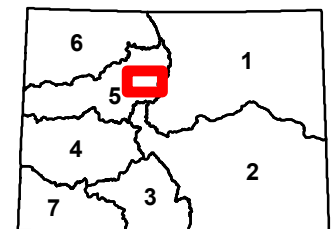


**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

January 24-25, 2022 CWCB Board Meeting  
 Consent Agenda Item 1.a Statement of Opposition  
 Case No. 21CW5 (Division 5)  
 Summit Land Co.

0 3 6 12 Miles



## DIVISION 5 WATER COURT-OCTOBER 2021 RESUME

**2. 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 OCTOBER 2021. *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.***

**21CW5 (CA1277, W-2346) SUMMIT COUNTY – BOULDER CREEK TRIBUTARY TO THE BLUE RIVER TRIBUTARY TO THE COLORADO RIVER. Summit Land Co., c/o Scott McDougal, President; 600 Josephine St.; Denver, CO 80206. (303)3334949. Peabody Ditch #3-Application for Change of Water Right. Legal description of structure as decreed in W-2346: SW¼NE¼, Sec.6, T.4S, R.78W. of the 6<sup>th</sup> P.M. Appropriation: Mar. 2, 1904. Amount: 0.5 c.f.s., absolute. Uses: irrigation, fish and wildlife propagation, livestock watering, summer and seasonal in-house domestic use for four (4) residential units. Amount of water that applicant intends to change: 0.5 c.f.s. Proposed Change in Point of Diversion: Tract 37, Sec. 6, T.4S, R.78W. of the 6<sup>th</sup> P.M. UTM: Easting 400349.4195 Northing 4399149.9487 Zone 13. Peabody Ditches #2 & #3 have been owned by Summit Land Co. for 60 plus years. Peabody Ditch #2 has 1.75 c.f.s. and was decreed in 1904 to run on the north bank of Boulder Creek. Peabody Ditch #3 has 0.5 c.f.s. and was decreed in 1904 to run on the south bank of Boulder Creek. In 1974, Div. 5 Water Court in Case No. W-2346 provided for both ditches to be combined for operation located at the same point of diversion on the north bank of Boulder Creek. That head gate is located at UTM: E400304.7482 N4399073.4291. Last fall, Atlas Financial Corp., a family affiliate of Summit Land Co., purchased Tract B and Tract D totaling about 5+ acres on the south side of Boulder Creek along with a right to purchase an additional 5+ acres. Located within this purchase is the original point of diversion of Peabody Ditch #3 (UTM: E400349.4195 N4399149.9487) and it ditches to a pond located nearby. It is to that original location that the applicant proposes to relocate Peabody Ditch #3 with the installation of a head gate and measuring flume. The point of diversion and the ditching to the pond appear, without a doubt, to be for the original Peabody Ditch #3. This land purchase presents an opportunity for the applicant to move Peabody Ditch #3 back to its original location in Tract B allowing applicant to expand beneficial use. Landowner of property on which structure is located: Atlas Financial Corp., 600 Josephine St., Denver, CO 80206.**

**YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of DECEMBER 2021 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.**

**Attachment  
Consent Agenda Item 1.a  
Jan 24-25, 2022**