

Consent Agenda Item 1.b

January 24-25, 2022 Board Meeting

Case No. 21CW3087 (Water Division 5); Merriman Living Trust dated August 27 2007, as amended

Summary of Water Court Application

Amended 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 November 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 right in Water Division 5 in the Eagle River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0124	Eagle River	confl Brush Creek	confl Colorado River	50 (10/1 - 4/30) 130 (5/1 - 9/30)	03/17/1980

Potential for Injury

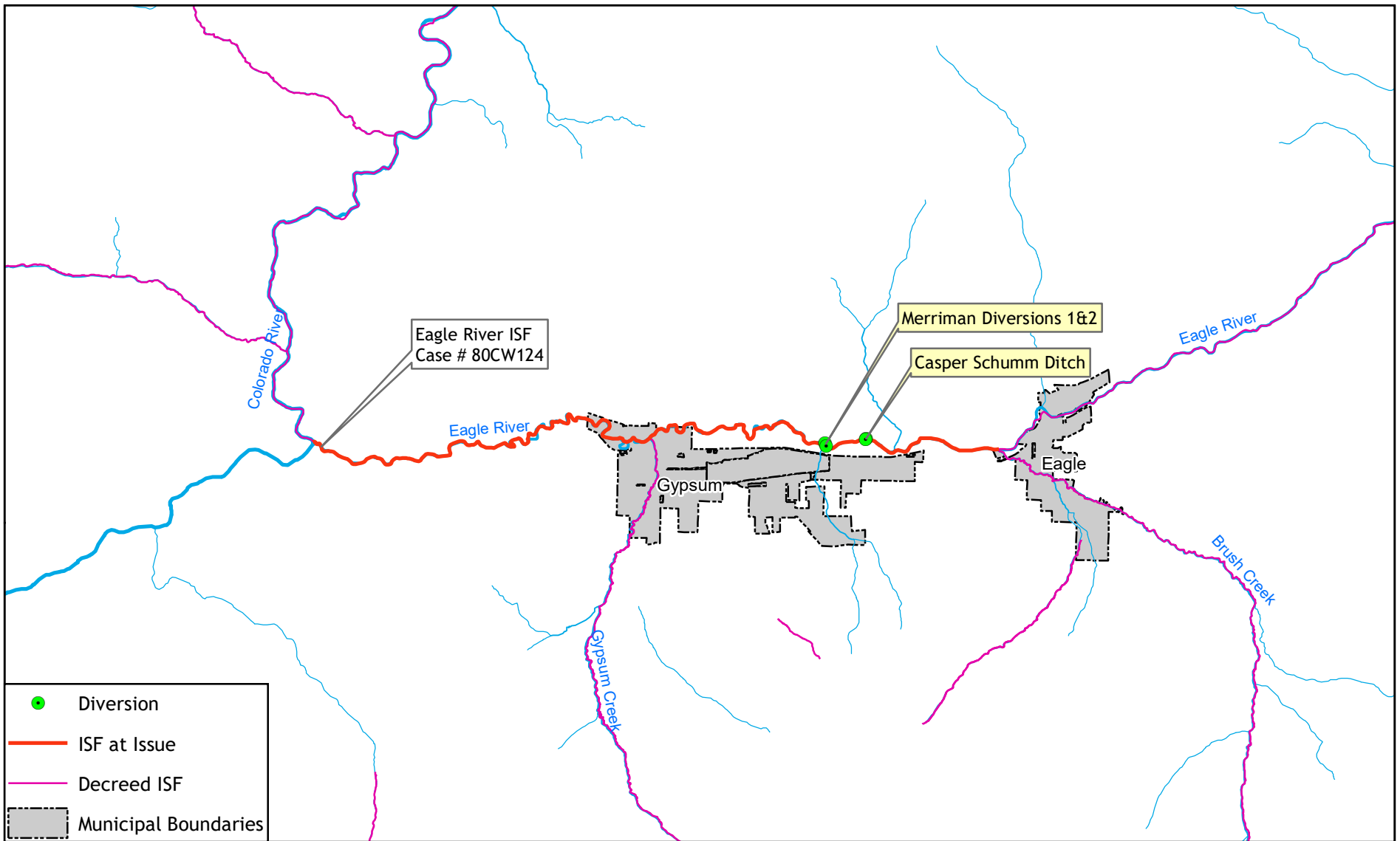
- The Applicant must provide engineering to support the claim that the wells are “headgate wells” and that well pumping will not result in delayed stream depletions.
- Terms and conditions are necessary to ensure that well pumping at the alternate points of diversion (“APODs”) will not exceed the diversion amount physically and legally available at the original point of diversion in combination with the APODs.

Other Objectors

Statements of Opposition were also filed by Bailey Family Investment Company LLLP, East Mesa Water Company, Richard James Holstrom, Trustee and Kate McKellar Ridgeway, Trustees of the Holdstrom / Ridgeway Revocable Trust, T2 Carbondale LLC, and West Divide Water Conservancy District.

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.

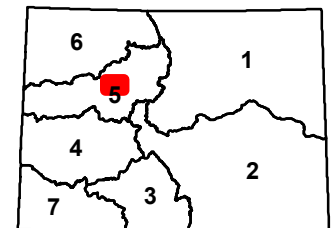


COLORADO
**Colorado Water
 Conservation Board**

Department of Natural Resources

January 24-25, 2022 CWCB Board Meeting
 Consent Agenda Item 1.b Statement of Opposition
 Case No. 21CW3087 (Division 5)
 Merriman Living Trust dated August 27 2007, as amended

0 1.5 3 6 Miles



DIVISION 5 WATER COURT-NOVEMBER 2021 RESUME

14. 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 NOVEMBER 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.*

21CW3087 EAGLE COUNTY. AMENDED APPLICATION FOR CHANGE OF WATER RIGHTS. Applicant: **Merriman Living Trust dated 8/27/2007, as amended** ("Merriman"), c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970945-6546. 2. Decreed water right for which change is sought: **Casper Schumm Ditch.** Name of Structure: **Casper Schumm Ditch.** Previous decrees: Orig. Decree: Priority No. 133 – CA385, 3/5/1901, Dist. Ct., Eagle County. Priority No. 380 (1st Enlarg.) CA963, 6/3/1940, Dist. Ct., Eagle County. Decreed Location: Headgate located on north bank of Eagle River at a point about 30 rods NW from SE corner of Lot 2 of Sec 2, T. 5 S, Rng 85 W of 6th P.M. Exhibit A attached. Source: Eagle River, trib. to Colorado River. Date of Approp.: Priority No. 133 – 10/8/1882; Priority No. 380 – 10/8/1890. Amt.: Priority No. 188 – Decreed Total: 2.5 cfs, Ownership Int.: 0.96 cfs; Priority No. 380 – Decreed Total: 1.79 cfs, Ownership Int.: 0.54 cfs Use: Irrig. of same lands historically irrig. under ditch. Proposed Change: Alt. pts. Of diversion for Merriman's ownership int. in 0.96 cfs (Priority No. 133) and 0.54 cfs (Priority No. 380) to two new wells acting as "headgate wells" within 100 ft. of Eagle River less than 50 ft. deep as (1) Merriman Diversion #1: UTM Zone 13, Easting 337126, Northing 4390530, Exhibit B, attached; (2) Merriman Diversion #2: UTM Zone 13, Easting 337175, Northing 4390477, Exhibit C, attached; (3) Place of use for Casper Schumm Ditch will not change. No existing intervening surface diversion pts or inflow between the new pt. of diversion and diversion pt. where change is being made. Exhibit A, shows no intervening structures. Historical Use: Applicant's interest in the water rights to be changed has been used on Applicant's property as shown on Exhibit D. This change only requests alternate points of diversion but the place of use of Applicant's water rights will not change. Applicant will limit diversions at the alternate points to the amts. legally and physically available at the original decreed location. Owner of the land upon which the existing structure is located: Applicant.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of JANUARY 2022 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.b
Jan 24-25, 2022