

Consent Agenda Item 1.b

September 20-21, 2022 Board Meeting

Case No. 22CW3042 (Water Division 5); Red Mountain Ranch Partnership, LLLP

Summary of Water Court Application

Application for Conditional Ground Water Right, Change to Alternate Point of Diversion, 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 July 2022 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
80CW0126	Eagle River	confl Lake Creek	confl Brush Creek	45 (10/1 - 4/30) 110 (5/1 - 9/30)	03/17/1980
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

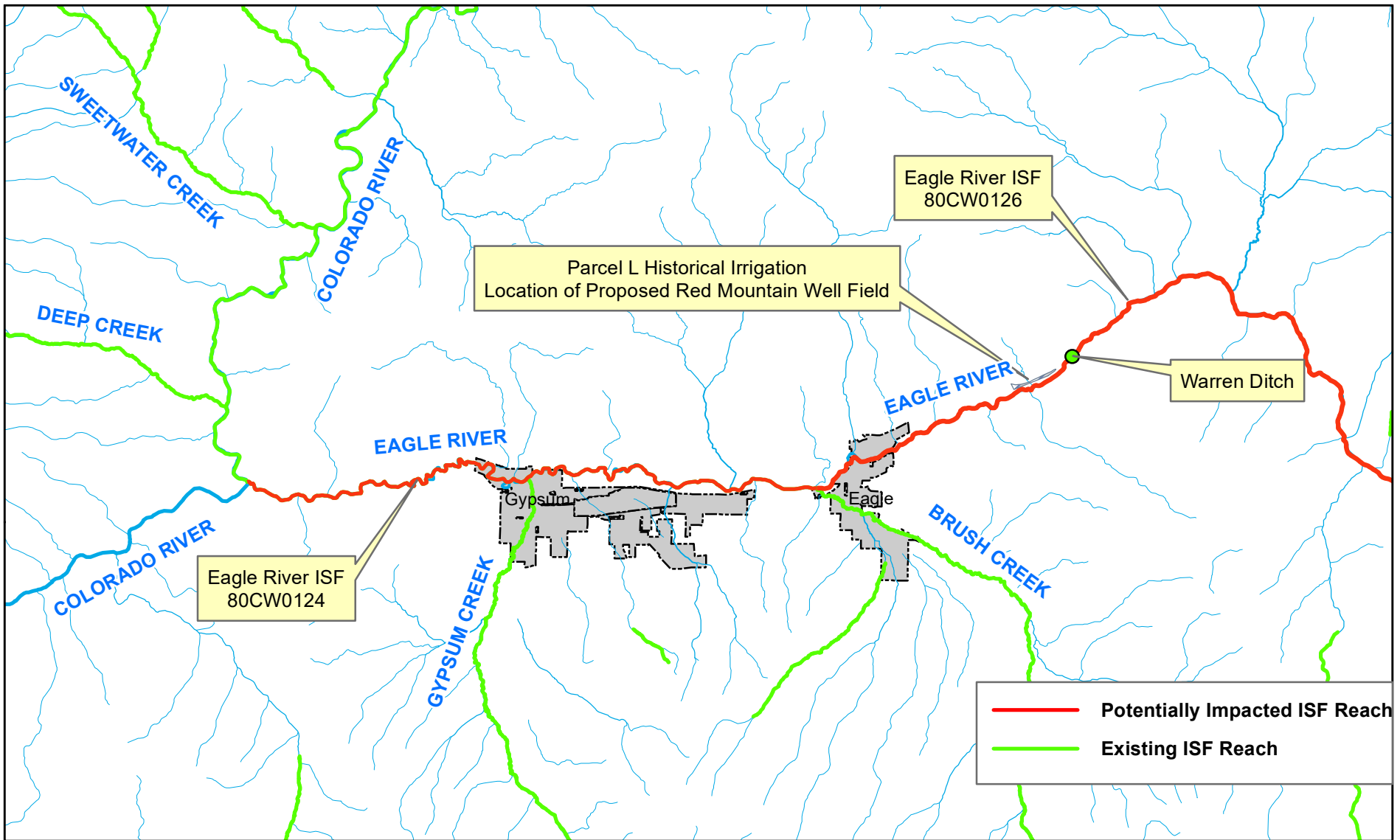
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Adequate terms and conditions should be included to protect CWCB's instream flow water rights from injury due to Applicant's claimed well field.
- Terms and conditions should be included in any decree entered in this case to ensure that the proposed decree will not injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by Canyonwoods Home Owners Association; Red Canyon Home Owners Association, and Josiah and Kathryn Macy.

Attorney Representing CWCB

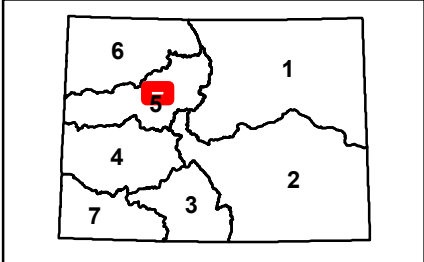
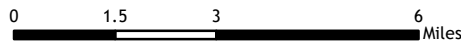
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

September 20-21, 2022 CWCB Board Meeting
 Consent Agenda Item 1b: Statement of Opposition
 Case No. 22CW3042 (Water Division 5)
 Red Mountain Ranch Partnership, LLLP



DIVISION 5 WATER COURT- MAY 2022 RESUME

(This publication can be viewed in its entirety on the Colorado State Judicial website at: www.courts.state.co.us).

4. 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 2022. *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.*

22CW3042 EAGLE COUNTY. Application for Conditional Ground Water Right, Change to Alternate Point of Diversion, and Plan for Augmentation. Applicant: **Red Mountain Ranch Partnership, LLLP**, c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. In this Application, Applicant requests confirmation of: a junior conditional groundwater water right for the Red Mountain Farm Well Field in the amt. of 2.448 cfs for the winter irr. of a comm. nursery and tree farm and the year-round indoor comm. uses in the warehouse; an alternate point of diversion (“APOD”) for a portion of the Applicant’s Warren Ditch Water Rights historically used on the parcel, from the ditch to the Red Mountain Farm Well Field, and a plan for aug. to allow the Red Mountain Farm Well Field to operate without injury to water rights holders in the Eagle River or CO River watersheds. First Claim Conditional Groundwater Right. Name of Water Right: Red Mountain Farm Well Field. Legal description: The Red Mountain Farm Well Field will consist of up to five (5) wells located within the 27.994 acres of land known as Red Mountain Ranch Parcel L (“Parcel L”), lying within T. 4 S., R. 84 W. of the Sixth P.M., and being further described as 21401 US Highway 6 as recorded in the Eagle Cty. Records at Reception No. 201914373. Source: **Groundwater, tributary to the Eagle River**. Depth: Up to 100 ft. Date of Approp.: 05/31/2022. How Approp. was Initiated: Filing of the application. Amt. Claimed: 2.448 cfs, conditional. Uses: Year-round indoor comm., outdoor winter irr. Remarks: Applicant proposes to divert water from the Red Mountain Farm Well Field under this new conditional right to provide for year-round indoor comm. demands, and to provide for outdoor winter irr. of a nursery and tree farm. Seasonality of the outdoor irr. was defined as the period between October 15 and May 15 in Case No. 84CW659. Out-of-priority depletions will be augmented pursuant to the Third Claim for relief via contract water from the CRWCD from Eagle Park Reservoir. The wells comprising the Red Mountain Farm Well Field will be located within Parcel L as depicted in Figure 1 on file with the Water Ct. Second Claim Surface Water Rights – Change in Point of Diversion. Name of Structure: Warren Ditch. Information From Previous Decrees: The Warren Ditch water rights associated with Parcel L were originally Decreed in CA 294, CA 963, and CA 1193 in Eagle Cty. Dist. Ct. They were then changed in Case No. 84CW659 to dom., irr., industrial, comm. and muni. uses. The Table below shows each water right in the Warren Ditch, the amt. included in Case No. 84CW659, and the pro-rata amt. allocated to the APOD requested in this application.

Case No.	Water Right	Adj Date	Appr Date	Priority No.	Decreed Amount (cfs)	Amount Included in 84CW659 Decree (cfs) 416 AF	APOD Pro-Rata Amount (cfs) 35.26 AF
CA294	Warren	1889-12-17	1885-04-20	32	3.700	3.179	0.269
CA294	Warren 1st Enl	1889-12-17	1889-10-09	95	2.400	2.074	0.176
CA294	Warren 2nd Enl	1889-12-17	1889-10-09	96	1.600	1.375	0.117
CA446	Warren 3rd Enl	1907-06-04	1901-10-01	235	0.936	0.000	0.000
CA963	Warren 4th Enl	1936-10-03	1922-10-01	450	11.830	8.825	0.748
CA1193	Warren 5th Enl	1958-07-23	1952-04-30	534	15.000	13.425	1.138
				Total	35.466	28.878	2.448

Decreed Point of Diversion: The Warren Ditch diverts from the NW side of the Eagle River in the NW ¼ of the SE ¼ of Sec. 24, T. 4 S., R. 84 W., of the 6th P.M. Source: Eagle River, tributary to the CO River. Decreed Uses: dom., irr., industrial, comm. and muni. as decree in Case No. 84CW659. Amt. to be Changed: 2.448 cfs. Historical Use: The Warren Ditch water rights to be changed to the APOD at the Red Mountain Ditch Well Field are based on the historical consumptive use from the historic irri. of 20.38 acres within Parcel L as quantified in Case No. 84CW659. The area of historic use is depicted in Figure 2 on file with the Water Ct. Proposed Change: Applicants are requesting a change to an alternate point of diversion for a portion of their interests in the Warren Ditch to the Red Mountain Farm Well Field as depicted in Figure 1 on file with the Water Ct. There will be no change in the place or time of use of

the Warren Ditch Water Rights as they will continue to be applied for summer irri. use on up to 20.38 acres on Parcel L. The only change sought is to the new point of diversion at the Red Mountain Well Field, rather than the Warren Ditch. The Red Mountain Well Field will consist of up to five (5) wells located within the 27.994 acres of Parcel L, lying within T. 4 S., R. 84 W. of the 6th P.M., and being further described as 21401 US Highway 6 as recorded in the Eagle Cty. Records at Reception No. 201914373. Remarks: The Applicant's interests in the Warren Ditch Water Rights diverted from the Red Mountain Well Field will continue to divert under their respective priorities to provide for the summer season (as defined in 84CW659 May 15 to October 15) irri. of up to 20.38 acres on Parcel L, while the new outdoor winter season irri. and indoor year-round comm. uses in the warehouse will occur under a 2022 priority date and be augmented per the First and Third Claims for Relief. Lagged depletions have been accounted for and will be augmented as detailed in the Third Claim for Relief below. Third Claim Plan for Aug. Name of structure to be augmented: The Red Mountain Farm Well Field, described above. Water rights to be used for aug.: Applicant will replace out-of-priority lagged depletions from winter season irr. and year-round comm. use from the new point of diversion at the Red Mountain Farm Well Field pursuant to a contract with the CRWCD. Prior to the entry of a ruling or decree, Applicant will provide evidence to the Ct. of the existence of a CRWCD contract for the required amt. of aug. water required to account for the lagged depletions. The Red Mountain Farm Wellfield's water uses will be augmented during an administrative call by releases from the CRWCD's CO River and Eagle River Supply Sources as described in the application and available on CRWCD's website www.crwcd.org and include Wolford Mountain Reservoir, Ruedi Reservoir, Eagle Park Reservoir the Exchange Supply. Statement of Plan for Aug.: Water Demands: Applicant is developing a comm. nursery and tree farm operation on Parcel L E. of Eagle, CO. A portion of the Applicant's Warren Ditch Water Rights associated with Parcel L will subsequently be diverted from the APOD at the Red Mountain Farm Well Field, rather than the Warren Ditch. This plan replaces those out-of-priority lagged depletions occurring from the new junior uses of winter irr. of the nursery and tree farm and for year-round indoor comm. uses in the warehouse as detailed in the First Claim for Relief. A complete engineering report detailing the plan for aug. is in Exh. A on file with the Water Ct. Operation of the Plan: Applicant will replace out of priority depletions through the purchase of CRWCD contract water stored in the Eagle Park Reservoir from the aug. sources identified above. The Applicant assumed a year-round call on the CO River from the Shoshone Powerplant and the "Cameo Call" collection of senior rights diverting in DeBeque Canyon upstream from Grand Junction. The Applicant will meet calls against its out-of-priority diversions and depletions by having water released from the CRWCD's sources in amts., including transit losses, to fully replace those depletions. A table depicting augmented stream depletions is attached in Table 1 on file with the Water Ct. and reflects an annual total of 2.064 a.f. However, the Applicant will secure 2.271 a.f. of CRWCD contract water in order to accommodate transit losses. Calls originating on the Eagle River will also be augmented via CRWD contract water coming from the Eagle Park Reservoir. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure is or will be constructed: The Applicant owns Parcel L, the situs of the Red Mountain Farm Well Field. WHEREFORE, the Applicant prays for a decree confirming a conditional groundwater right, the change to an alternate point of diversion, and plan for aug. as described herein. (11 pages of original application, Exh. A, Table 1, & Figures 1-2)

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