

Consent Agenda Item 1.b

January 23-24, 2023 Board Meeting

Case No. 22CW3097 (Water Division 5); M & M Industries, Inc., Cari Elizabeth Mankowski & Eric David Mankowski and Patricia Price & Robert Price

Summary of Water Court Application

Application for Change in Surface Point of Diversion.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in November 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 rights in Water Division 5 in the Blue River Watershed, that could be injured by this application:

Appropriated ISF Water Rights

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-3646 (1977)	Boulder Creek	Headwaters	confl Blue River	3 (10/1 - 4/30) 6 (5/1 - 9/30)	01/19/1977
87CW297	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
87CW298	Blue River	confl Slate Creek	inlet Green Mtn Res @ Doig Gulch	90 (10/1 - 11/30) 85 (12/1 - 2/29) 125 (5/1 - 9/30) 90 (3/1 - 4/30)	10/02/1987
87CW299	Blue River	outlet Green Mountain Res	confl Colorado River	60 (5/1 - 7/15) 85 (7/16 - 4/30)	10/02/1987

Potential for Injury

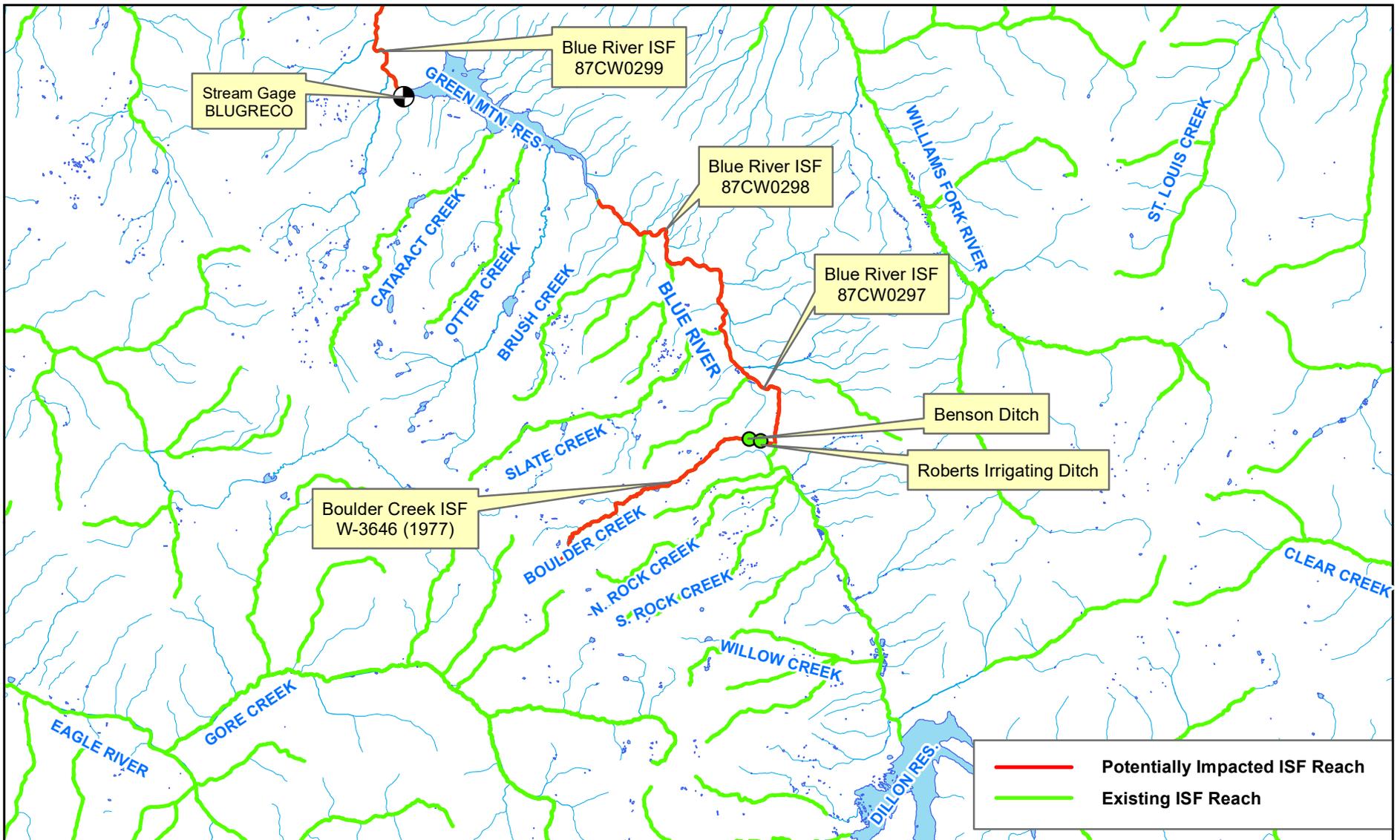
- The requested upstream move of a point of diversion for Applicant's senior water right could injure the intervening instream flow water right.
- The proposed change of water rights could cause an expansion of use which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the Applicant's operations will not cause injury to the CWCB's instream flow water rights, including the Peabody #1 Ditch acquired by CWCB and changed to instream flow use on Boulder Creek and the Blue River in Case No. 05CW264.

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

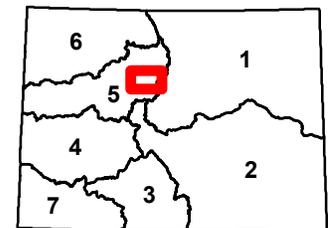
William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

January 23-24, 2023 CWCB Board Meeting
 Consent Agenda Item 1.b
 Statement of Opposition
 Case No. 22CW3097 (Water Division 5)
 M & M Industries, Inc. et. al.



DIVISION 5 WATER COURT- SEPTEMBER 2022 RESUME

6. 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 SEPTEMBER 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.*

22CW3097 M&M INDUSTRIES INC., 33205 Highway 9, Silverthorne, CO 80498, 970-389-2220, **CARI ELIZABETH MANKOWSKI, ERIC DAVID MANKOWSKI**, 132 Oasis Ranch Rd, Silverthorne, CO 80498, (970) 470-0901, **PATRICIA PRICE, ROBERT PRICE**, 66 Oasis Ranch Rd, Silverthorne, CO 80498, 970-409-9077 (P. Andrew Jones, #29076, P. Andrew Jones, #29076, Law Office of P. Andrew Jones, 1213 Founders Circle, Windsor, CO 80550, Telephone: (970) 235-0252, E-mail: ajones@pandrewjones.com). **APPLICATION FOR CHANGE IN SURFACE POINT OF DIVERSION.** 2. Decreed water right for which change is sought: 2.1. Name of structure: Roberts Irrigating Ditch, Ditch No. 78, Priority No. 78. 2.1.1. Date of original and all relevant subsequent decrees: C.A. 1710, District Court, **SUMMIT COUNTY**, decreed on October 25, 1937. Consumptive use quantified and partial change of use decreed in Case No. 96CW370, District Court, Water Division 5, decreed December 10, 1998. 2.1.2. Legal description of structure as described in most recent decree that adjudicated the location: The decreed point of diversion is at the headgate located on the North Bank of Boulder Creek, at a point whence the NE corner of Section 5, Township 4 South, Range 78 West, 6th P.M. bears North 3°38' East, 863 feet. 2.1.3. **Decreed source of water: Boulder Creek, tributary to Blue River** 2.1.4. Appropriation Date: December 31, 1905. 2.1.5. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): 1.4 c.f.s., absolute. Applicant M&M Industries, Inc. owns 1.4 c.f.s., absolute. 2.1.6. Decreed use or uses: Domestic 2.1.7. Amount of water that applicant intends to change: Applicant M&M Industries, Inc. intends to change the point of diversion for 1.28 c.f.s. Note:

.12 c.f.s. of Applicant M&M Industries, Inc.'s 1.4 c.f.s. was dedicated to augmentation plan and abandoned to the stream in 96CW370. 2.2. Name of structure: Roberts Irrigating Ditch, Ditch No. 210, Priority No. 219. 2.2.1. Date of original and all relevant subsequent decrees: C.A. 1709, District Court, Summit County, decreed on October 26, 1937. Consumptive use quantified and partial change of use decreed in Case No. 96CW370, District Court, Water Division 5, decreed December 10, 1998. 2.2.2. Legal description of structure as described in most recent decree that adjudicated the location: The decreed point of diversion is at the headgate located on the North Bank of Boulder Creek, at a point whence the NE corner of Section 5, Township 4 South, Range 78 West, 6th P.M. bears North 3°38' East, 863 feet. 2.2.3. Decreed source of water: Boulder Creek, tributary to Blue River 2.2.4. Appropriation Date: April 1, 1895. 2.2.5. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): 9 c.f.s., absolute. Applicant M&M Industries, Inc. owns 6.33 c.f.s., absolute. Applicants Cari Elizabeth Mankowski and Eric David Mankowski own .2 c.f.s., absolute. Applicants Patricia Price and Robert Price own .33 c.f.s. absolute. 2.2.6. Decreed use or uses: Irrigation 2.2.7. Amount of water that applicant intends to change: Applicant M&M Industries Inc. intends to change the point of diversion for 5.73 c.f.s. Note: .6 c.f.s. of Applicant M&M Industries, Inc.'s 6.33 c.f.s. was dedicated to augmentation plan and abandoned to the stream in 96CW370. Applicants Cari Elizabeth Mankowski and Eric David Mankowski intend to change the point of diversion for .2 c.f.s. Applicants Patricia Price and Robert Price intend to change the point of diversion for .33 c.f.s. 3. Detailed description of proposed change in a surface point of diversion: The Roberts Irrigating Ditch has been affected by construction in the vicinity of the ditch, increasing seepage and making water delivery difficult. Applicants propose to move the point of diversion for Applicants' interests in the Roberts Irrigating Ditch priorities 78 and 219 upstream approximately 700 feet on Boulder Creek to the existing diversion structure known as the Benson Ditch. A map of the old and proposed new points of diversion is attached hereto as Exhibit "A." 4. Location of the new surface point of diversion: 4.1. PLSS Format: (from previous decrees) Northerly on the bank of Boulder Creek in the NE1/4 of the NE1/4, Section 5, Township 4 South, Range 78 West, 6th P.M. at a point which bears South 43.16'13" West 1061.5 feet from the NE corner of said Section 5. 4.2. UTM Format: Easting 402086, Northing 4399293, Zone 13. Location established by DWR mapping. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed. The applicant must notify these persons that the applicant is applying for this water right and certify to the Court that the applicant has done so. United States Forrest Service 680 Blue River Parkway, Silverthorne CO 80498.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of NOVEMBER 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
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January 23-24, 2023**