

**Consent Agenda Item 1.b**

March 15-16, 2023 Board Meeting

Case No. 22CW3049 (Water Division 3); The Colorado Division of Parks and Wildlife and The Parks and Wildlife Commission (Piedra Pass Exchanges)

**Summary of Water Court Application**

Application for Appropriative Rights of Exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2023 to protect CWCB's instream flow water rights.

**CWCB Instream Flow Water Rights**

The CWCB holds many water rights, including the following instream flow water rights in Water Division 3 in the Rio Grande River Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0095	Beaver Creek	headwaters at lake	confl SF Rio Grande	8 (10/1 - 4/30) 14 (5/1 - 9/30)	07/08/1980
83CW0040	Rio Grande	confl Squaw Creek	confl Clear Creek	20 (10/1 - 4/30) 55 (5/1 - 9/30)	08/16/1982
83CW0049	Rio Grande	confl Clear Creek	confl Trout Creek	45 (10/1 - 4/30) 90 (5/1 - 9/30)	08/16/1982
84CW0163	South Fork Rio Grande	confl Beaver Creek	confl Rio Grande River	25 (10/1 - 4/30) 50 (5/1 - 9/30)	08/16/1982

**Potential for Injury**

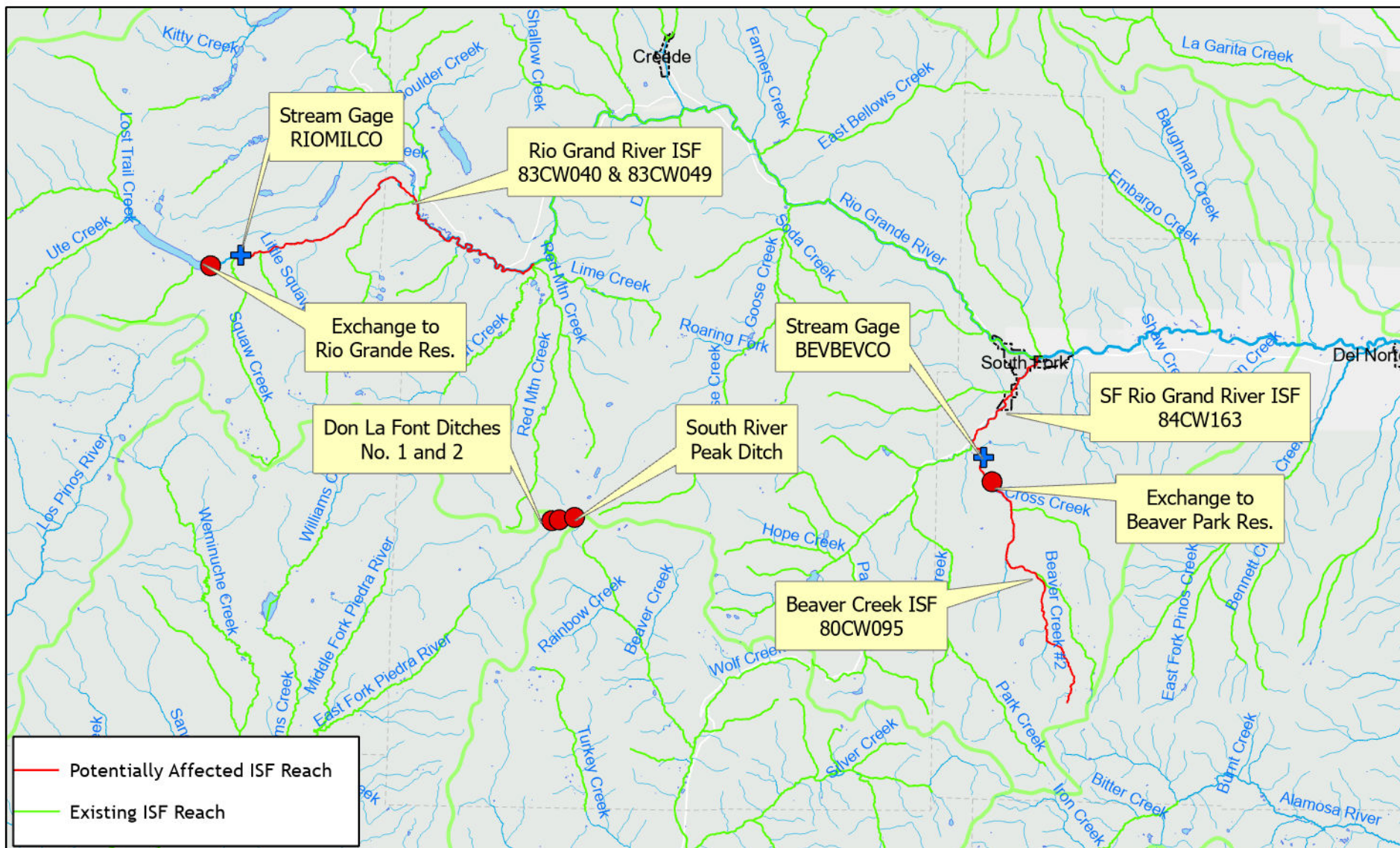
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- The claim to store in future unspecified reservoirs is undefined and could potentially impact several of CWCB's instream flow water rights in Division 3.
- Terms and conditions should be included in any decree entered in this case to ensure that Applicant's claims will not injure the CWCB's instream flow water rights.

**Other Objectors**

Statements of Opposition were also filed by High Valley Ranch, LLC; Rio Grande Water Conservation District; Southwestern Water Conservation District; Bootjack Ranch LLC; San Juan Water Conservancy District; and the United States of America\_U.S.D.A. Forest Service

**Attorney Representing CWCB**

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



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

Department of Natural Resources

March 15-16, 2023 CWC Board Meeting  
 Consent Agenda Item 1.b: Statement of Opposition  
 Case No. 22CW3049 (Water Division 3)  
 Colorado Division of Parks and Wildlife

0 3 6 12  
 Miles



DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO  
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS FILED IN  
WATER DIVISION 3.

Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in Water Division 3, containing notice of applications and certain amendments filed in the office of the Water Clerk during the month of December 2022 for each county affected.

**22CW3049 COLORADO DIVISION OF PARKS AND WILDLIFE AND THE PARKS AND WILDLIFE COMMISSION, 6060 Broadway, Denver, CO 80216 (Please address all correspondence and inquiries regarding this matter to Elizabeth M. Joyce 720-508-6761 and Tarn Udall 720-508-6266, Office of the Attorney General, 1300 Broadway, 7th Floor, Denver, CO 80203.) Application for Appropriative Rights of Exchange in RIO GRANDE, MINERAL AND HINSDALE COUNTIES, COLORADO.** Applicant, the Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission (CPW), hereby files this application for new appropriative rights of exchange of CPW's Piedra Pass 2022 Water Rights. 1. Name, mailing address, e-mail address, and telephone number of Applicants: Colorado Parks and Wildlife Attn: Ed Perkins, Water Rights Administrator, 6060 Broadway, Denver, Colorado 80216, 303-291-7466; ed.perkins@state.co.us 2. General Description of Application: CPW seeks confirmation of two new appropriative rights of exchange of transmountain water in Water Division 3. Concurrent with this application, CPW is filing an application in Water Division 7 seeking confirmation of three new transmountain appropriations in the Don La Font Ditch No. 1, Don La Font Ditch No. 2, and the South Peak River Ditch, collectively referred to as the Piedra Pass 2022 Water Rights. After delivering the Piedra Pass 2022 Water Rights into Water Division 3, CPW may use the transmountain water directly or deliver water into storage in Rio Grande Reservoir or Beaver Park Reservoir by way of the exchanges described in this application. 3. Water Court Jurisdiction: The appropriate venue in which to adjudicate an application for new diversions of transmountain water rights is in the basin of diversion, but the appropriate venue for use of an existing transbasin water right is the basin of use. See Department of Natural Resources v. Ogburn, 570 P.2d 4 at 5 (Colo. 1977). Since these exchanges will occur solely in Water Division 3, Water Division 3 is the appropriate venue. 4. Description of Appropriative Rights of Exchange A. Name of Exchange: Piedra Pass TMD — Rio Grande Reservoir Exchange i. Location of Structures Involved: a. Exchange From Point: The confluence of Red Mountain Creek and Rio Grande River, located in the SW1/4, NW1/4, Section 18, Township 40 North, Range 1 West, NMPM. UTM Coordinates: NAD83, Zone 13, 321587 E 4177217 N. b. Exchange To Point: Rio Grande Reservoir, located in Sections 5, 6, 7, 8, 9, 10, 13, 14, 15, and 16, Township 40 North, Range 4 West, and Sections 31 and 32 of Township 41 North, Range 4 West, NMPM, Hinsdale County, Colorado. Reservoir outlet: NW1/4, SW1/4, Section 13, Township 40 North, Range 4 West, NMPM. UTM Coordinates: NAD83, Zone 13, 300263.7 E 4177292.6 N. c. Exchange Reach: The exchange reach is from the point where Red Mountain Creek enters the Rio Grande River, as described above, to Rio Grande Reservoir, as described above. The length of the exchange is approximately 19.5 river miles. d. Source and Use of Water: CPW's Piedra Pass 2022 Water Rights, for all decreed

purposes. The Piedra Pass 2022 Water Rights include diversions from the Don La Font Ditch No. 1, the Don La Font Ditch No. 2, and the South River Peak Ditch, which are diverted from Water Division 7 and delivered into Water Division 3 by way of two pipelines to the headwaters of Red Mountain Creek. 1. Don La Font No. 1: SW1/4, SE1/4 Section 32, Township 39 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, 322949 E, 4159889 N. 2. Don La Font No. 2: NW1/4, NW1/4 Section 5, Township 38 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, 323476 E, 4159696 N. 3. South River Peak Ditch: NE1/4, NE1/4, Section 5, Township 38 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, 234603 E, 4159311 N. e. Appropriation: 1. Date: May 23, 2022. 2. How Initiated: CPW began diverting the Piedra Pass 2022 Water Rights under free river conditions and delivered DATE FILED: December 30, 2022 5:03 PM them by way of exchange into storage under administrative approval by the Division 3 Engineer. 3. Note: CPW operated the Piedra Pass TMD-Rio Grande Reservoir Exchange in 2022 and is coordinating with the Division 3 Engineer to confirm 2022 water year accounting. The final decree may reflect changes to the amounts made absolute due to input from this consultation. f. Exchange Rate Claimed: 22 cfs, of which 4.42 cfs is ABSOLUTE, with 17.58 cfs remaining CONDITIONAL. B. Name of Exchange: Piedra Pass TMD — Beaver Park Reservoir Exchange i. Location of Structures Involved: a. Exchange From Point: Confluence of South Fork Rio Grande and Rio Grande in the SE1/4, NW1/4, Section 34, Township 40 North, Range 3 East, NMPM. UTM Coordinates: NAD83, Zone 13, 355802.8 E 4170885.3 N. b. Exchange To Point: Beaver Park Reservoir outlet located in the NW1/4, SE1/4, Section 28, Township 39 North, Range 3 East, NMPM. UTM Coordinates: NAD83, Zone 13, 352875.2 E 4162411.2 N. c. Exchange Reach: The exchange reach is from the confluence of the South Fork Rio Grande, as described above, to Beaver Park Reservoir, as described above. The length of the exchange is approximately 7.5 river miles. d. Source and Use of Water: CPW's Piedra Pass 2022 Water Rights, for all decreed purposes. The Piedra Pass 2022 Water Rights include diversions from the Don La Font Ditch No. 1, the Don La Font Ditch No. 2, and the South River Peak Ditch, which are diverted from Water Division 7 and delivered into Water Division 3 by way of two pipelines to the headwaters of Red Mountain Creek. 1. Don La Font No. 1: SW1/4, SE1/4 Section 32, Township 39 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, 322949 E, 4159889 N. 2. Don La Font No. 2: NW1/4, NW1/4 Section 5, Township 38 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, 323476 E, 4159696 N. 3. South River Peak Ditch: NE1/4, NE1/4, Section 5, Township 38 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, 234603 E, 4159311 N. e. Appropriation: 1. Date: May 23, 2022. 2. How Initiated: CPW began diverting the Piedra Pass 2022 Water Rights under free river conditions and delivered them by way of exchange into storage under administrative approval by the Division 3 Engineer. 3. Note: CPW operated the Piedra Pass TMD-Beaver Park Reservoir Exchange in 2022 and is coordinating with the Division 3 Engineer to confirm 2022 water year accounting. The final decree may reflect changes to the amounts made absolute due to input from this consultation. f. Exchange Rate Claimed: 22 cfs, of which 4.42 cfs is ABSOLUTE, with 17.58 cfs remaining CONDITIONAL. 5. Name and addresses of 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, or upon which water will be stored: To the best of CPW's knowledge, the owners of the underlying lands on which the existing storage structures listed above are located are as set forth below. No construction of new structures or modification of existing structures is contemplated in connection with these appropriations. A. Rio Grande Reservoir: The Rio Grande Reservoir is owned by the San Luis Valley Irrigation District ("SLVID"), 296 Miles St., Center,

CO 81125; and is located on lands owned by SLVID and the U.S. Forest Service, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, CO 81144. B. Beaver Park Reservoir: Beaver Park Reservoir is owned by CPW and located on lands owned by U.S. Forest Service, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, CO 81144; High Valley Ranch, LLC, Barry Beal, 104 S. Pecos St., Midland, TX 79701. WHEREFORE, CPW respectfully requests this Court enter a decree confirming CPW's appropriation of the two exchanges as set forth herein and granting such other relief as the Court deems just and proper. (6 pages)

### **Annual Replacement Plan Notification List for Water Division No. 3**

The "Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights" ("Groundwater Rules") were adopted by the State Engineer and granted final approval by the Water Court on March 15, 2019.

Under Rule 4.2 of the Groundwater Rules, the Annual Replacement Plan Notification List or ARP List ("List") means the list of interested persons established by the State Engineer for the purposes of notifying interested persons of the submission of any Subdistrict Annual Replacement Plans, approval or disapproval of those plans by the State and Division Engineers, and requests for variances under the Groundwater Rules. Under Rule 22 of the Groundwater Rules, when the rules mandate the provision of notice in accordance with Rule 22, the State Engineer must provide notice to interested persons through an electronic mailing list, such as the List, and the Division of Water Resources website.

The State Engineer will, in January of each year, cause to have published in the water court resume for Water Division No. 3, an invitation to be included on the List. Interested persons are invited to sign up for the List at: <https://dwr.colorado.gov/public-information/notification-lists>.

### **SUBSTITUTE WATER SUPPLY PLAN AND PRODUCED NONTRIBUTARY GROUNDWATER NOTIFICATION LIST**

Section 37-92-308(6), C.R.S. directs the State Engineer to establish a notification list for each water division for the purpose of notifying interested parties of requests for the State Engineer's approval of substitute water supply plans ("SWSP") filed in that water division pursuant to section 37-92-308, C.R.S. The SWSP notification list is also used to provide notice of proposed water right loans to the Colorado Water Conservation Board for use as instream flows under section 37-83-105(2)(b)(II), C.R.S., notice of applications for the State Engineer's approval of interruptible water supply agreements under section 37-92-309(3)(a), C.R.S., notice of applications for fallowing-leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., notice of fire suppression ponds under section 37-80-124(10)(a)(II)(E), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

Pursuant to Rule 17.5(B)(2) of the Rules and Regulations for the Determination of the Nontributary Nature of Ground Water Produced Through Wells in Conjunction with the Mining of Minerals, at 2 CCR 402-17 ("Rules"), the State Engineer is publishing this invitation to persons to be included on the Produced Nontributary Ground Water Notification List. According to Rule 17.5(B)(2) of the Rules, the State Engineer must establish a Produced Nontributary

Ground Water Notification List for each water division within the State of Colorado for the purposes of ensuring that water users within each water division receive adequate notice of proceedings held pursuant to the Rules. In order to establish such notification list, the State Engineer is directed, in January of each year, to cause to have published in the water court resume for each water division this invitation to be included on the Produced Nontributary Ground Water Notification List for the applicable water division.

This notice is an invitation to be included on the SWSP or Produced Nontributary Groundwater notification lists. Sign up for these or other notification lists maintained by the State Engineer at: <https://dwr.colorado.gov/public-information/notification-lists>. Additional information is available on the Division of Water Resources' website at: <https://dwr.colorado.gov/>.

**THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS 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.**

You are notified that you have until the last day of February 2023, 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 or a protest to the requested correction. A copy of such a statement of opposition or protest must also be served upon the Applicant or the Applicant's attorney and an affidavit or certificate of such service must be filed with the Water Clerk. The filing fee for the Statement of Opposition is \$192.00. Forms may be obtained from the Water Clerk's Office or our website at [www.courts.state.co.us](http://www.courts.state.co.us). Jennifer Pacheco, Water Clerk, Water Division 3, 8955 Independence Way, Alamosa, CO 81101.