

Consent Agenda Item 1.f

March 15-16, 2023 Board Meeting

Case No. 22CW3128 (Water Division 5); Mainland Ranch P3 LLC

Summary of Water Court Application

Application for Simple 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 February 2023 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 Roaring Fork River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-2938 (1976)	Woody Creek	headwaters	confl Roaring Fork River	6 (1/1 - 12/31)	01/14/1976
85CW0639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985
85CW0646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985

Potential for Injury

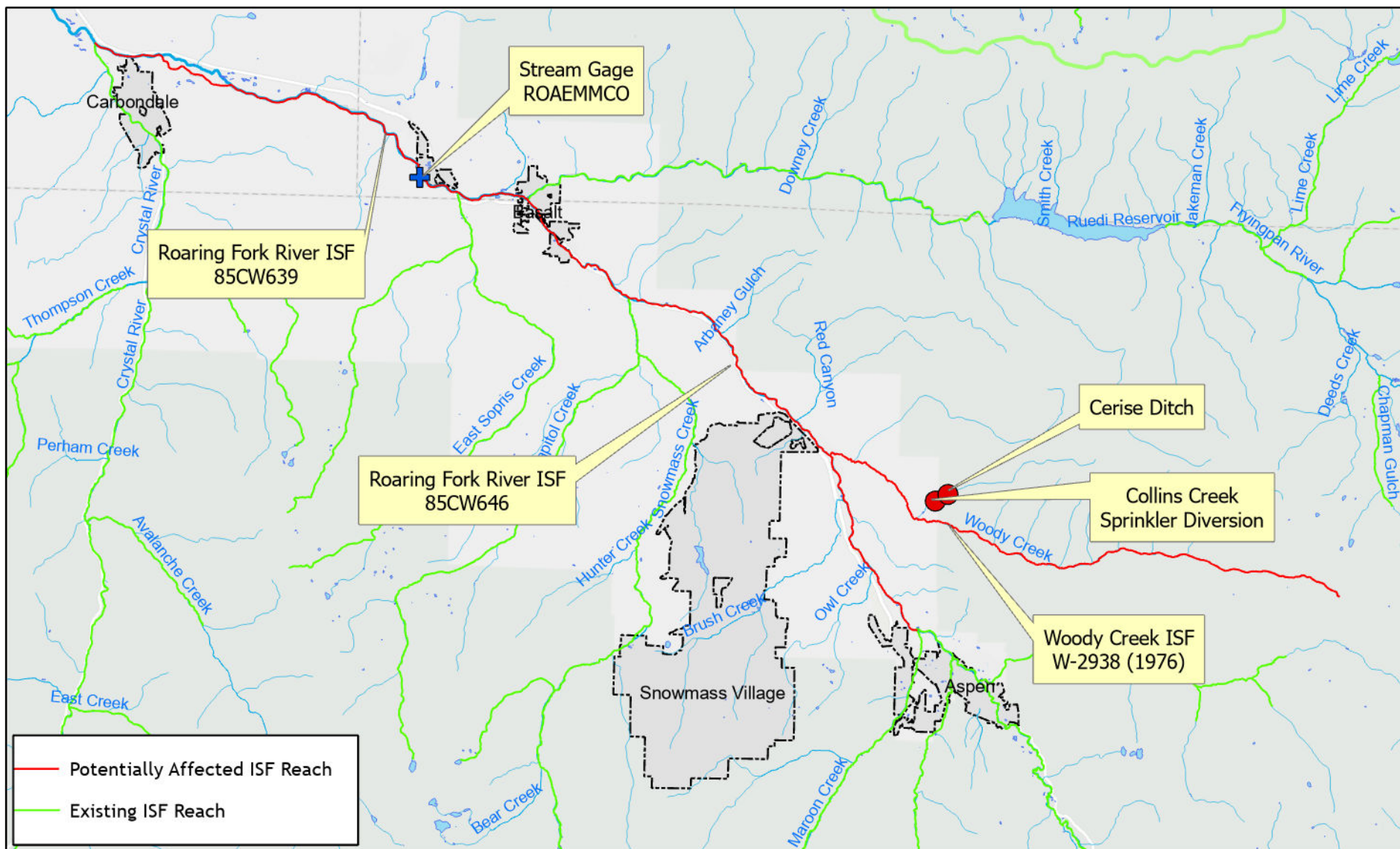
- The proposed change of water rights could cause an expansion of use, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's water rights and flows protected on the Roaring Fork River as decreed in Case No. 10CW184 for CWCB's interest in the Stapleton Brothers' Ditch water right.

Other Objectors

A Statement of Opposition was also filed by Woody Creek Farms, LLC.

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

March 15-16, 2023 CWC Board Meeting
 Consent Agenda Item 1.f: Statement of Opposition
 Case No. 22CW3128 (Water Division 5)
 Mainland Ranch P3 LLC

0 1.75 3.5 7
 Miles



DIVISION 5 WATER COURT- DECEMBER 2022 RESUME

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 37-80124(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/>.

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 DECEMBER 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.*

22CW3128 PITKIN COUNTY, COLORADO, COLORADO RIVER OR ITS TRIBUTARIES. Mainland Ranch P3 LLC, c/o Paul L. Noto, Esq. and John M. Sittler, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave, Basalt, CO 81621, (970) 920-1030. First Claim: For Simple Change in Surface Point of Diversion. Name of structure: Cerise Ditch, Priority No. 241. Date of original decree: October 27, 1925, Civil Action 2508, Garfield County District Court. Subsequent decrees: May 13, 1992, Case No. 90CW73, Division 5 Water Court. March 30, 2007, Case No. 06CW178, Division 5 Water Court. Legal description: Headgate is located at a point on the right bank of Collins Creek, a tributary of Woody Creek, which, in turn, is a tributary of the Roaring Fork River, from which Collins Creek said ditch derives its supply of water in the SW¼, SW¼, of Section 13, Township 9 South, Range 85 West, of the 6th P.M. at a point whence the Northeast corner of Section 23, T. 9 S., R. 85 W. of the 6th P.M. bears South 68°31'30" W. 1359.85 feet, as described by UTM coordinates: 4,347,664.8 N, 341,589.4 E, NAD 1983, Zone 13 N. A map is on file with the court as Exhibit A. Source: Collins Creek, tributary to Woody Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Appropriation date: December 15, 1907. Amount: 1.1364 c.f.s. Use: Irrigation. Amount Applicant intends to change: 0.51 c.f.s. Detailed description of proposed change: Applicant, along with other entities controlled by Applicant, owns an undivided 50 percent interest in the Cerise Ditch Priority Nos. 241 and 242. Applicant individually owns 0.51 c.f.s. in Priority No. 241 and 0.92 c.f.s. in Priority No. 242. In Case No. 90CW73, Division 5 Water Court, Applicant's predecessor changed a portion of Priority No. 241 to the Collins Creek Sprinkler Diversion. Under the terms of that decree, 0.03 c.f.s. from Priority No. 241 may be diverted at the Collins Creek Sprinkler Diversion, and a like 0.03 c.f.s. must be bypassed to the stream. A separate entity controlled by Applicant owns the 0.06 c.f.s. previously changed to the Collins Creek Sprinkler Diversion. Therefore, a total of 0.51 c.f.s. in Priority No. 241 and 0.92 c.f.s. in Priority No. 242 of Applicant's interest remains decreed to divert at the original point of diversion. In Case No. 90CW230, Division 5 Water Court, the owner of the other 50 percent interest in the Cerise Ditch, Priority Nos. 241 and 242 changed the point of diversion for its rights to the Hamilton Ditch. Applicant now requests to change the remainder of its interest in the Cerise Ditch, Priority Nos. 241 and 242 from the decreed point of diversion at the Cerise Ditch to the Collins Creek Sprinkler Diversion. Applicant and its associated entities collectively

own the entirety of the Collins Creek Sprinkler Diversion water right. The Collins Creek Sprinkler Diversion is located approximately one-half mile below the Cerise Ditch on Collins Creek. There are no intervening surface diversion points or inflows between the existing and changed points of diversion, including instream flow water rights. Applicant will continue to divert the same amount of water as done historically from the Cerise Ditch, Priority Nos. 241 and 242 water rights from the changed point of diversion at the Collins Creek Sprinkler Diversion. Applicant will not increase the diversion rate or volume of water diverted by this change. Diversion at the Collins Creek Sprinkler Diversion will allow Applicant to use the Cerise Ditch water more efficiently for irrigation on its property. This simple change will reduce Applicant's operation and maintenance costs by allowing diversion through the existing structures and related irrigation infrastructure at the Collins Creek Sprinkler Diversion. This change will not injuriously affect the owners of any vested water rights or decreed conditional water rights. A map showing the irrigated acreage is on file with the court as Exhibit B. Applicant owns the land on which the changed point of diversion, the Collins Creek Sprinkler Diversion, is located and where the water is put to beneficial use. **Second Claim: For Simple Change in Surface Point of Diversion.** Name of structure: Cerise Ditch, Ions Enlargement, Priority No. 242. Date of original decree: October 27, 1925, Civil Action 2508, Garfield County District Court. Subsequent decrees: May 13, 1992, Case No. 90CW73, Division 5 Water Court. March 30, 2007, Case No. 06CW178, Division 5 Water Court. Legal description: Headgate is located at a point on the right bank of Collins Creek, a tributary of Woody Creek, which, in turn, is a tributary of the Roaring Fork River, from which Collins Creek said ditch derives its supply of water in the SW $\frac{1}{4}$, SW $\frac{1}{4}$, of Section 13, Township 9 South, Range 85 West, of the 6th P.M. at a point whence the Northeast corner of Section 23, T. 9 S., R. 85 W. of the 6th P.M. bears South 68°31'30" W. 1359.85 feet, as described by UTM coordinates: 4,347,664.8 N, 341,589.4 E, NAD 1983, Zone 13 N. A map is on file with the court as Exhibit A. Source: Collins Creek, tributary to Woody Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Appropriation date: March 20, 1915. Amount: 1.84 c.f.s. Use: Irrigation. Amount Applicant intends to change: 0.92 c.f.s. Detailed description of proposed change: See paragraph 3.A of the application. Location of new point of diversion: The Collins Creek Sprinkler Diversion, as decreed in Case No. 90CW73, Division 5 Water Court. The Collins Creek Sprinkler Diversion is located in the NE $\frac{1}{4}$, NE $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 23, T. 9 S., R. 85 W. of the 6th P.M. at a point whence the northeast corner of said section bears N. 42°30' E. a distance of 640 feet, as described by UTM coordinates: 4,347,378.8 N, 341,070. 4 E, NAD 1983, Zone 13 N. A map is on file with the court as Exhibit A. The United States Forest Service owns the land on which the existing Cerise Ditch point of diversion is located. Applicant owns the land on which the changed point of diversion, the Collins Creek Sprinkler Diversion, is located and where the water is put to beneficial use.

YOU ARE HEREBY 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 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.