

**Consent Agenda Item 1.g**

March 15-16, 2023 Board Meeting

Case No. 22CW3129 (Water Division 5); Sopris Mountain Ranch Homeowners' Association, Inc.

**Summary of Water Court Application**

Application for Alternate 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-2939 (1976)	West Sopris Creek	headwaters	confl East Sopris Creek	3 (1/1 - 12/31)	01/14/1976
W-2951 (1976)	Sopris Creek	confl E&W Sopris Creeks	confl Roaring Fork River	5 (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

**Potential for Injury**

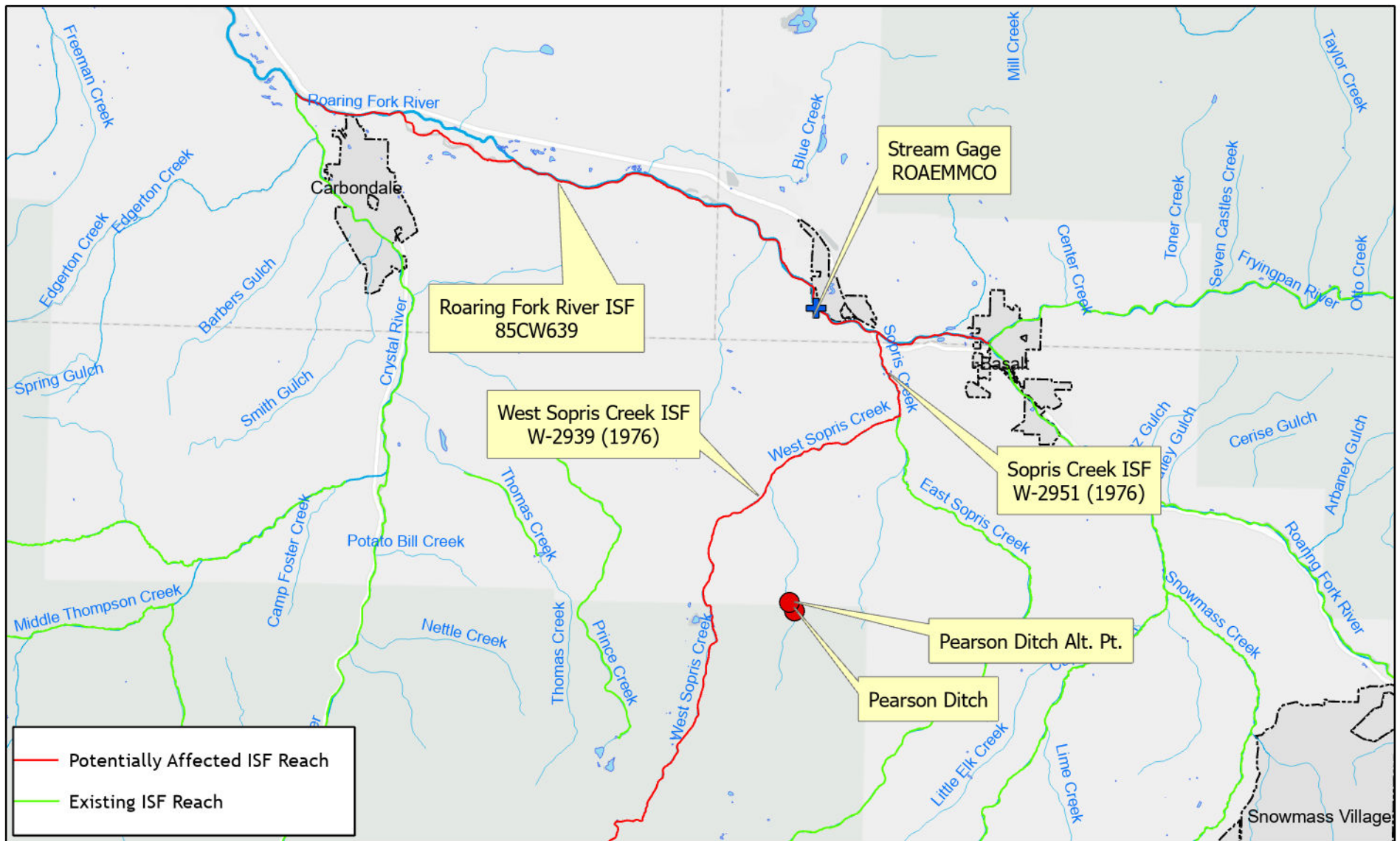
- Applicant's proposed down-ditch, alternate point of diversion could cause an expansion of use by increasing the physical availability of water beyond what was historically available, which could injure the CWCB's instream flow water rights.
- For any decree entered in this case, terms and conditions should be included to ensure that the proposed decree will not injure the CWCB's instream flow water rights.

**Other Objectors**

A Statement of Opposition was also filed by Deadwood Ranch I, LLC.

**Attorney Representing CWCB**

Rebecca L. Crotty, Assistant Attorney General, is assigned to this case and can be contacted at rebecca.crotty@coag.gov, or 720-508-6260.



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

Department of Natural Resources

March 15-16, 2023 CWCB Board Meeting  
 Consent Agenda Item 1.g: Statement of Opposition  
 Case No. 22CW3129 (Water Division 5)  
 Sopris Mountain Ranch HOA, Inc.

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## 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/>.

**7. 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.***

**22CW3129 PITKIN COUNTY – COLORADO RIVER OR ITS TRIBUTARIES. Sopris Mountain Ranch Homeowners' Association, Inc., 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. APPLICATION FOR CHANGE TO ALTERNATE POINT OF DIVERSION. Decreed water right for which alternate point of diversion is sought: Pearson Ditch. Date of original decree: October 25, 1952, Civil Action 4033, Garfield County District Court. Subsequent decree: January 5, 2007, Case No. 06CW141, Division 5 Water Court. Legal description of decreed point of diversion: NE ¼ NE ¼ NE ¼, Township 9 South, Range 87 West, 6th P.M., Pitkin County, Colorado at a point whence the NE corner of Section 3, Township 9 South, Range 87 West, 6th P.M. bears North 47°01' East 990 feet. As described in Case No. 06CW141, Division 5 Water Court: 614 feet from the north section line and 658 feet from the east section line of Section 3, Township 9 South, Range 87 West, 6th P.M. UTM NAD83 Z13: Northing – 4352690, Easting – 319908. GPS: 39.30490, -107.08867. A map is on file with the court as Exhibit A. Source: Dry Creek, tributary to West Sopris Creek, tributary to Sopris Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Appropriation date: October 10, 1951. Amount: 2.0 c.f.s., absolute, as decreed in Case No. 06CW141. Uses: Irrigation and storage under Case No. 07CW196, Division 5 Water Court. Amount of water Applicant intends to divert at alternate point: 2.0 c.f.s. Detailed description of proposed alternate point of diversion: Applicant owns the entirety of the Pearson Ditch and operates the Pearson Ditch for the benefit of Sopris Mountain Ranch homeowners. In Case No. 07CW196, Applicant changed the type and place of use of a portion of its Pearson Ditch water to allow lawn and landscape irrigation and small ponds within Sopris Mountain Ranch. Applicant has historically diverted the Pearson Ditch at the decreed point of diversion. Applicant claims an alternate point of diversion for the entirety of its Pearson Ditch rights. The alternate point of diversion is located approximately 950 feet down-ditch from the decreed point of diversion. There are no intervening surface diversion points or inflows between the existing and alternate point of diversion, including instream flow water rights. Applicant will continue to divert the same amount of water to irrigate the same lands as done historically from the Pearson Ditch original decreed point of diversion. Applicant will not increase the diversion rate or volume of water diverted by this change. Diversion at the new alternate point will allow Applicant to use its Pearson Ditch water more efficiently for**

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irrigation and storage uses within Sopris Mountain Ranch and will confirm historical practice. The addition of the alternate point of diversion will not injuriously affect owners of any vested water rights or decreed conditional water rights. Diversion records for the Pearson Ditch are on file with the court as Exhibit B. The water court previously quantified the historic consumptive use of the Pearson Ditch in Case No. 07CW196. In that case, the court determined the Pearson Ditch historically irrigated 20.32 acres with a consumptive use of 1.14 acre-feet per acre. Applicant then dried up 14.20 acres and changed the place and type of use for those historic consumptive use credits. Because the consumptive use for the Pearson Ditch has been previously calculated, the water right should not be requantified in this case. C.R.S. § 37-92-305(3)(e). A map showing the historically irrigated acreage is on file with the court as Exhibit C. The United States Forest Service owns the land upon which the decreed and alternate points of diversion are located. Mountain Paradise, LLC, Richard and Sally Russo, Pattie Bernard and Collier Weiner, David and Cynthia Culpepper, Steven Lue, Mountain Wildflower LP, Austin Fam Trust, Tomcat Ranch Holdings LLC, Kathryn Roberts, Blue Cabin LLC, Morgan Michael and Deidre Whitcomb, Keysha Bailey and Joseph Deery, Bonnie M. Kloosterman Trust, Armen Malikian, and Richard V. Filippini Trust own the land upon which 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.**