

**Consent Agenda Item 1.i**

March 15-16, 2023 Board Meeting

Case No. 22CW3131 (Water Division 5); Mainland Ranch P2 LLC

**Summary of Water Court Application**

Application for Change in 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**

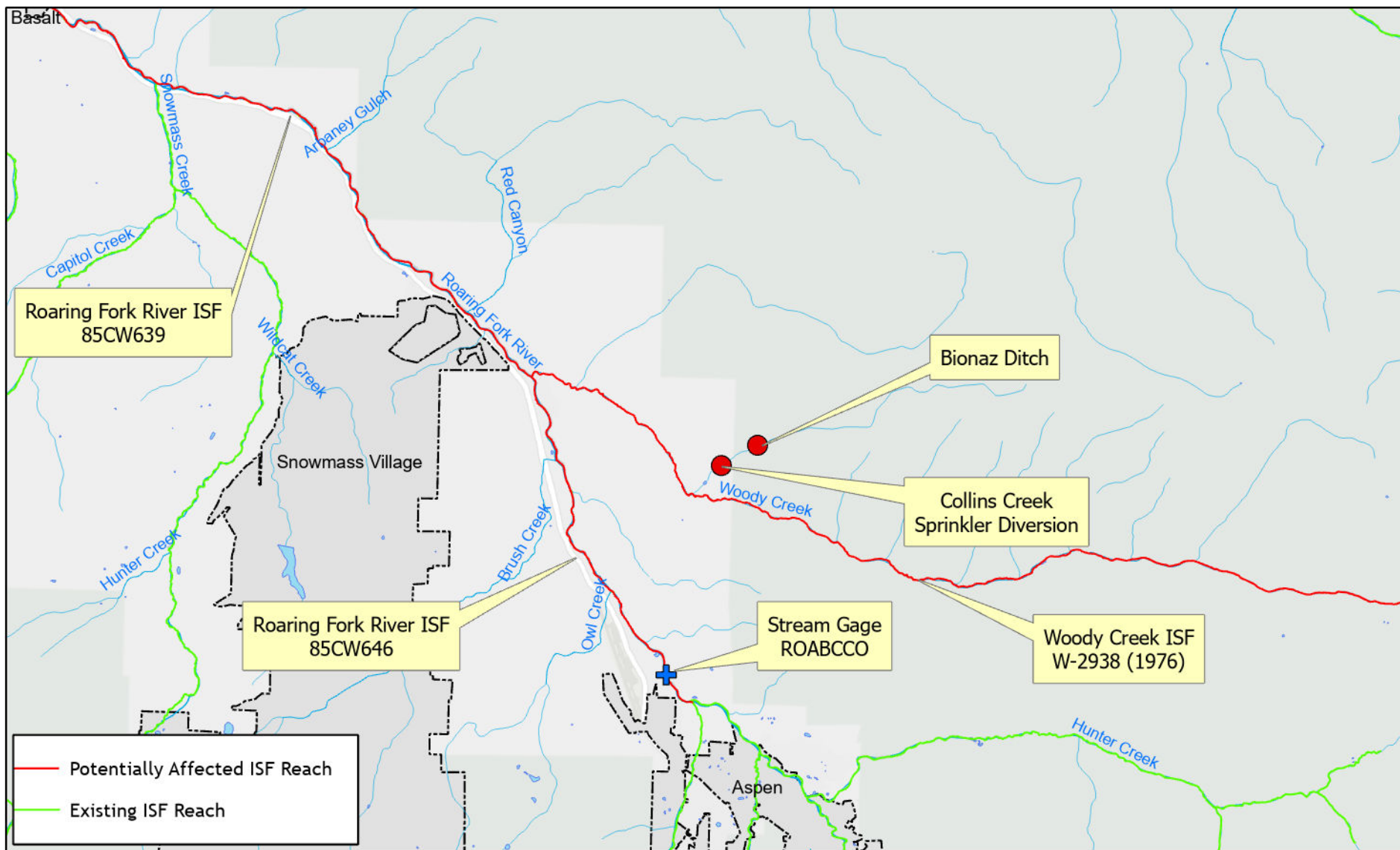
- The proposed change of water rights could cause an expansion of use and could alter the time, place, and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's instream flow water rights, including 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**

Statements of Opposition were also filed by The City of Aurora, Colorado, acting by and through its Utility Enterprise; and 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](mailto:jennifer.mele@coag.gov), or 720-508-6282.

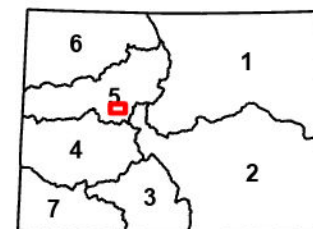


**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

March 15-16, 2023 CWCB Board Meeting  
 Consent Agenda Item 1.i: Statement of Opposition  
 Case No. 22CW3131 (Water Division 5)  
 Mainland Ranch P2 LLC

0 0.75 1.5 3  
 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/>.

**9. 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.***

**22CW3131 PITKIN COUNTY, COLORADO, COLORADO RIVER OR ITS TRIBUTARIES. Mainland Ranch P2 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 Change in Surface Point of Diversion.** Decreed structure for which change is sought: Bionaz Ditch, Priority No. 243. 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. 06CW179, Division 5 Water Court. Legal description: Headgate is located at a point on the East 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 SE¼ SW¼ of Section 13, Township 9 South, Range 85 West, of the 6th P.M., whence the Southwest corner of Section 13, Township 9 South, Range 85 W. of the 6th P.M. bears South 70°13' W. 2287 feet, as described by UTM coordinates: 4,347,754.1 N, 341,860.3 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: June 1, 1915. Amount: 1.5 c.f.s. Use: Irrigation. Amount of water Applicant intends to change: 0.78 c.f.s. Detailed description of proposed change: Applicant, along with other entities controlled by Applicant, owns the entirety of the Bionaz Ditch, Priority Nos. 243 and 403F. Applicant individually owns a 0.78 c.f.s. interest in Priority No. 243 and the full 2.75 c.f.s. in Priority No. 403F. In Case No. 90CW73, Division 5 Water Court, Applicant's predecessor changed a portion of Priority No. 243 to the Collins Creek Sprinkler Diversion. Under the terms of that decree, 0.36 c.f.s. from Priority No. 243 may be diverted at the Collins Creek Sprinkler Diversion. An identical 0.36 c.f.s. must be bypassed and released to the stream. Therefore, a total of 0.78 c.f.s. in Priority No. 243 and 2.75 c.f.s. in Priority No. 403F remains decreed to divert at the original point of diversion. Applicant now requests to change the remainder of the Bionaz Ditch, Priority Nos. 243 and 403F from the decreed point of diversion at the Bionaz Ditch to the Collins Creek Sprinkler Diversion. The Collins Creek Sprinkler Diversion is located approximately three-fifths of one mile below the Bionaz Ditch on Collins Creek. Applicant and its associated entities collectively owns the entirety of the Collins Creek Sprinkler Diversion water right.**

The change will reduce Applicant's operation and maintenance costs and allow more efficient use of its Bionaz Ditch water rights. Applicant will continue to irrigate the same historically irrigated acreage with its Bionaz Ditch water rights. The irrigated area is shown on Exhibit B on file with the court. As a result of the proposed change, the reach of Collins Creek between the Bionaz Ditch decreed point of diversion and the Collins Creek Sprinkler Diversion will benefit from increased flows. Because the place of use will not change, all irrigation return flows will accrue to the stream in accordance with their historical patterns. Applicant will not increase the diversion rate or volume of water diverted by this change. Historic diversion records for the Bionaz Ditch are on file with the court as Exhibit C. The only intervening water right between the Bionaz Ditch and Collins Creek Sprinkler Diversion, including instream flows, is the Cerise Ditch. Applicant, through various entities, owns a 50 percent interest in the Cerise Ditch. The other 50 percent not owned by Applicant was changed to the Hamilton Ditch in Case No. 90CW230. Applicant, through a separate entity, requested a simple change in surface point of diversion to move its Cerise Ditch interest to the Collins Creek Sprinkler Diversion in Case No 22CW3128. Therefore, this change will not injuriously affect the owners of any vested water rights or decreed conditional water rights. Applicant, through a separate entity, 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 Change in Surface Point of Diversion.** Decreed structure for which change is sought: Bionaz Ditch, Priority No. 403F. Date of original decree: August 25, 1936, Civil Action 3082, Garfield County District Court. Subsequent decrees: March 30, 2007, Case No. 06CW179, Division 5 Water Court. Legal description: Headgate is located at a point on the East 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 SE¼ SW¼ of Section 13, Township 9 South, Range 85 West, of the 6th P.M., whence the Southwest corner of Section 13, Township 9 South, Range 85 W. of the 6th P.M. bears South 70°13' W. 2287 feet, as described by UTM coordinates: 4,347,754.1 N, 341,860.3 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: June 1, 1916. Amount: 2.75 c.f.s. Use: Irrigation. Amount of water Applicant intends to change: 2.75 c.f.s. Detailed description of proposed change: See paragraph 3 of the application. Location of new surface 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 ¼, NE ¼, NE ¼ of Section 23, T. 9 S., R. 85 W. of the 6<sup>th</sup> 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 Bionaz Ditch point of diversion is located. Applicant, through a separate entity, 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.**