

Consent Agenda Item 1.I

March 15-16, 2023 Board Meeting

Case No. 22CW3050 (Water Division 7); The Colorado Division of Parks and Wildlife and
The Parks and Wildlife Commission (Piedra Pass)

Summary of Water Court Application

Application for Conditional and Absolute Surface Water Rights and Water Storage Rights.

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 7 in the Piedra River and Upper San Juan River Watersheds, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-1812 (1978)	Piedra River	confl MF & EF Piedra River	confl Williams Creek	30 (3/1 - 8/31) 20 (9/1 - 2/29)	03/16/1978
W-1813 (1978)	Piedra River	confl Williams Creek	confl Weminuche Creek	44 (3/1 - 8/31) 30 (9/1 - 2/29)	03/16/1978
W-1814 (1978)	Piedra River	confl Weminuche Creek	confl First Fork Piedra River	53 (3/1 - 8/31) 35 (9/1 - 2/29)	03/16/1978
W-1815 (1978)	Piedra River	confl First Fork Piedra River	US Highway 160 bridge	70 (3/1 - 8/31) 40 (9/1 - 2/29)	03/16/1978
W-1818 (1978)	East Fork Piedra River	confl Deadman Creek	confl MF Piedra River	10 (1/1 - 12/31)	03/16/1978
79CW0045	Piedra River	US Highway 160 bridge	confl Navajo Res	70 (3/1 - 8/31) 40 (9/1 - 2/29)	03/14/1979
80CW0030	West Fork San Juan River	headwaters in vicinity	confl Wolf Creek	14 (3/1 - 8/31) 8 (9/1 - 2/29)	01/30/1980
80CW0040	San Juan River	confl EF & WF San Juan River	confl McCabe Creek	50 (3/1 - 8/31) 30 (9/1 - 2/29)	01/30/1980
80CW0041	West Fork San Juan River	confl Wolf Creek	confl EF San Juan River	25 (4/1 - 8/31) 14 (9/1 - 3/31)	01/30/1980

Potential for Injury

- Terms and conditions are necessary to ensure these rights are legally and physically curtailable during times of an instream flow call.

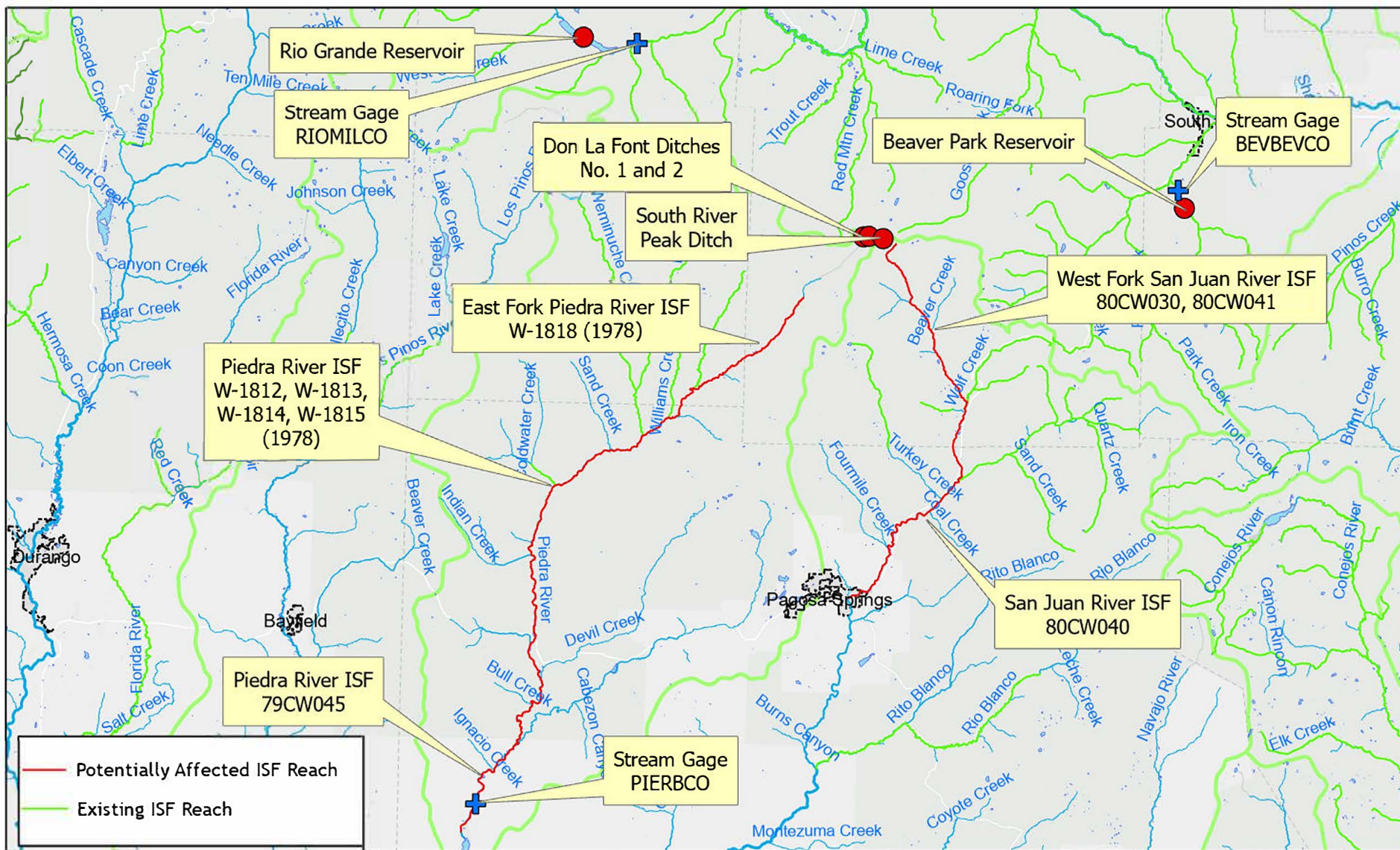
- Terms and conditions should be included in any decree entered in this case to ensure that Applicant's claims will not injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by High Valley Ranch, LLC; Southwestern Water Conservation District; Bootjack Ranch, LLC; San Juan Water Conservancy District; San Juan River Ranch Association, Inc.; 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, 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. 22CW3050 (Water Division 7) Colorado
 Division of Parks and Wildlife and The Parks and
 Wildlife Commission

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DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of December 2022, for each county affected.

22CW3050 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 Conditional and Absolute Surface Water Rights and Water Storage Rights in MINERAL, RIO GRANDE, HINSDALE, ALAMOSA, and CONEJOS COUNTIES, COLORADO. Applicant, the Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission (CPW), hereby files this application for new appropriations for surface water rights and water storage rights for the 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 new water rights in three existing ditches originating in Water Division 7, for transmountain delivery into Water Division 3 for direct use, storage and exchange purposes. **3. Water**

Court Jurisdiction: The appropriate venue in which to adjudicate a new diversion is in the basin of diversion. *See Department of Natural Resources v. Ogburn*, 570 P.2d 4 at 5 (Colo. 1977). For the subject water rights, that is Water Division 7. Concurrent with filing this application for new appropriations, CPW is filing an application in Water Division No. 3 for associated appropriative rights of exchange of the subject water rights. **4. Piedra Pass 2022 Water Rights.** The Piedra Pass 2022 Water Rights are made up of junior water rights in three transmountain ditches: the Don La Font No. 1 Ditch, the Don La Font No. 2 Ditch, and the South River Peak Ditch. The Piedra Pass 2022 Water Rights are delivered into Water

Division 3 by way of two pipelines to the headwaters of Red Mountain Creek. **A. Don La Font No. 1 Ditch, 2022 Enlargement** i. Legal description of point of diversion: SW1/4, SE1/4 Section 32, Township 39 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, Easting 322949, Northing 4159889. All locations were derived from Division of Water Resources CDSS online MapViewer. a. In the original decree for the Don La Font No. 1 Ditch, Water Division 7, District 29, CA D-308 (1968) the location was described as: “The headgate of said ditch is located on the northeast bank of an unnamed tributary of Piedra River, from which it derives its source of water, whence Englemann [sic] spruce 30 inches in diameter blazed and marked BT † bears North 5°02’ West 181.6 feet distant, also whence Englemann [sic] spruce 26 inches in diameter blazed and marked BT † bears North 87°08’ East, 46 feet distant, and said headgate is located in unsurveyed mountainous country in approximately Section 4, Township 38 North, Range 1 West, N.M.P.M.” ii. Source: Unnamed tributary to the East Fork Piedra River. iii. Appropriation date: May 23, 2022. iv. How Appropriation was initiated: CPW began diverting water for the subject uses on May 23, 2022. v. Date Applied to Beneficial Use: May 23, 2022. Water was diverted under free river conditions

**Attachment
Consent Agenda Item 1.I
March 15-16, 2023**

and delivered by way of exchange into storage under administrative approval by the Division 3 Engineer.

vi. Amount: 6 cfs, of which 0.37 cfs is ABSOLUTE, with 5.63 cfs remaining CONDITIONAL. (The maximum rate of diversion was recorded on May 23, 2022.)

B. Don La Font No. 2 Ditch, 2022 Enlargement

i. Legal description of point of diversion: NW1/4, NW1/4 Section 5, Township 38 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, Easting 323476, Northing 4159696. All locations were derived from Division of Water Resources CDSS online MapViewer.

a. In the original decree for the Don La Font No. 2 Ditch, Division 7 Water Court, District 29, CA D-308 (1968), the location was described as: 1. Headgate No. 1: “One headgate of the ditch and enlargement is located in a seepage area tributary to the Piedra River, from whence it derives its supply of water, whence blazed Englemann [sic] spruce 30 inches in diameter bears North 13°24’ East 121.1 feet distant, also whence blazed Englemann [sic] spruce 36 inches in diameter bears North 2°30’ East 203.5 feet distant.” 2. Headgate No.2: “Another headgate of the enlargement is located in a seepage area tributary to the Piedra River, from which it derives its supply of water, whence blazed Engelmann [sic] spruce 30 inches in diameter bears North 43°59’ East 341.7 feet distant, also whence blazed Engelmann [sic] spruce 36 inches in diameter bears North 33°22’ East 396.7 feet distant.” 3. “Said headgates are located in unsurveyed mountainous country in approximately Section 5, Township 38 North, Range 1 West, N.M.P.M.” 4. Note: Only one headgate for the Don La Font Ditch No. 2 currently exists.

ii. Source: Unnamed tributary to the East Fork Piedra River.

iii. Appropriation date: May 23, 2022.

iv. How Appropriation was initiated: CPW began diverting water for the subject uses on May 23, 2022.

v. Date Applied to Beneficial Use: May 23, 2022. Water was diverted under free river conditions and delivered by way of exchange into storage under administrative approval by Division 3 Engineer.

vi. Amount: 8 cfs, of which 1.82 is ABSOLUTE, with 6.18 cfs remaining CONDITIONAL. (The maximum rate of diversion was recorded on August 2, 2022.)

C. South River Peak Ditch, 2022 Enlargement

i. Legal description of point of diversion: NE1/4, NE1/4, Section 5, Township 38 North, Range 1 West, NMPM. UTM coordinates: NAD 83, Zone 13, Easting 234603, Northing 4159311. All locations were derived from Division of Water Resources CDSS online MapViewer.

a. In the original decree for the South Peak River Ditch, Division 7 Water Court, District 29, CA D-308 (1968), the location was described as: “The headgate of said ditch and enlargement is located on the West bank of the West Fork of the San Juan River, from which it derives its supply of water, whence a cross cut on a solid rock ledge 6 x 4 x 2 feet high, bears North 43°57’ West 49.2 feet distant, also whence a † cut on a solid rock ledge 4 x 3 x 1.5 feet high bears North 67°09’ East 93 feet distant. Said headgate is located in unsurveyed mountainous country in approximately Section 4, Township 38 North, Range 1 West, N.M.P.M.”

ii. Source: Unnamed tributary to the West Fork San Juan River.

iii. Appropriation date: May 23, 2022.

iv. How Appropriation was initiated: CPW began diverting water for the subject uses on May 23, 2022.

v. Date Applied to Beneficial Use: May 23, 2022. Water was diverted under free river conditions and delivered by way of exchange into storage under administrative approval by the Division 3 Engineer.

vi. Amount: 8 cfs, of which 0.85 is ABSOLUTE, with 7.15 cfs remaining CONDITIONAL. (The maximum rate of diversion was recorded on August 2, 2022.)

D. Uses for the Piedra Pass 2022 Water Rights: The Piedra Pass 2022 Water Rights are diverted into Water Division 3 and applied directly, stored directly, or stored by exchange for the following uses:

i. Filling and refilling, including replacing seepage and evaporation, of reservoirs, ponds, natural basins, oxbows, and dikes, for piscatorial, wildlife and recreational uses.

ii. Irrigation of up to 700 acres, including early and late season irrigation for supporting native species, developing sheet ice and enhancing soil moisture profile.

iii. Augmentation, including to augment wells for the purpose of replacing depletions caused by well operations in Water Division 3.

iv. As a source of substitute supply in any lawful exchanges operated by CPW. The Piedra Pass 2022 Water Rights are transmountain diversions and as such CPW claims the right for reuse, successive use, and use to extinction. *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1 (Colo. 1996).

E. Places of Use

i. Storage for the Piedra Pass 2022 Water Rights: Typically, CPW will divert the Piedra Pass 2022 Water Rights into Water Division 3, then deliver the water into initial storage in Rio Grande Reservoir, Beaver Park Reservoir, or any reservoir owned or controlled by CPW, for in-reservoir uses or for subsequent release for other uses

described above in Paragraph 4.D. Storage locations are generally depicted on **EXHIBIT A**. Storage in any other reservoir would be by way of agreement with the reservoir owner. a. 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. CPW stores water in Rio Grande Reservoir by agreement with the San Luis Valley Irrigation District, and all storage of the Piedra Pass 2022 Water Rights in Rio Grande Reservoir will be in accordance with its agreements. b. Beaver Park Reservoir: Located in Sections 27, 28, 33, and 34, Township 39 North, Range 3 East, and Section 3, Township 38 North, Range 3 East, NMPM. Located at a point whence the East ¼ corner of Section 28, Township 39 North, Range 3 East, NMPM bears North 79°13' East 2,065.45 feet. ii. Other pertinent places of use: For the uses described above in Paragraph D.i and ii. (other than storage in reservoirs), uses will be on properties owned or operated now or in the future by CPW, or other landowners' property by way of agreement. CPW's properties and reservoirs are generally depicted on **EXHIBIT A**. The area of potential irrigation use on private landowners' property is generally within the "irrigation corridor" depicted on **EXHIBIT B**. **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 diversion and 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. Piedra Pass Diversion Structures: The land on which the Piedra Pass diversion structures are located is owned by the United States Department of Agriculture, San Juan National Forest, 15 Burnett Court, Durango, CO 81301. B. 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. C. 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 Piedra Pass 2022 Water Rights as set forth herein and granting such other relief as the Court deems just and proper (10 pages including exhibits)

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 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 a certain application should not be granted or why it should be granted only 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; Forms are available through the Office of the Water Clerk or on the Judicial web site at www.courts.state.co.us; Stephanie Wills, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-247-2304)

Published: before January 31, 2023

/s/Stephanie Wills
Water Court Specialist

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 37-92309(3)(a), C.R.S., notice of applications for following-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/>.