

**Consent Agenda Item 1.b**

November 20-21, 2019 Board Meeting

Case No. 19CW3045 (Water Division 4); Rehoboth Land Partners, LLC

**Water Court Application**

Application for Change of Water Rights.

**Staff Recommendation**

Staff recommends that the Board ratify the September 2019 filing of a Statement of Opposition filed on behalf of the Board 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 4 in the Lower Dolores, San Miguel, and Uncompahgre Watersheds, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
04CW163	Spring Creek	Confluence of East and Middle Forks Spring Creek	Headgate of Kenton Ditch	5.3 (4/1 - 6/15) 2.6 (6/16 - 7/31) 0.9 (8/1 - 3/31)	01/28/2004
05CW215	Horsefly Creek	Confluence of Sheep Creek	Confluence of San Miguel River	13 (4/1 - 6/5)	01/25/2005
06CW167	East Fork Spring Creek	Headwaters in vicinity	Confluence of Spring Creek	1.8 (4/1 - 10/31) 1.6 (11/1 - 3/31)	01/25/2006
11CW129	San Miguel River	Confluence of Calamity Draw	Confluence of Dolores River	325 (4/15 - 6/14) 170 (6/15 - 7/31) 115 (8/1 - 8/31) 80 (9/1 - 2/29) 115 (3/1 - 4/14)	01/25/2011
15CW3111	Dolores River	Confluence of San Miguel River	A private road bridge, the UTM coordinates for which are described in the CWCB's decree	900 (4/15 - 6/14) 400 (6/15 - 7/15) 200 (7/16 - 8/14) 100 (8/15 - 3/15) 200 (3/16 - 4/14)	01/28/2014

**Potential for Injury**

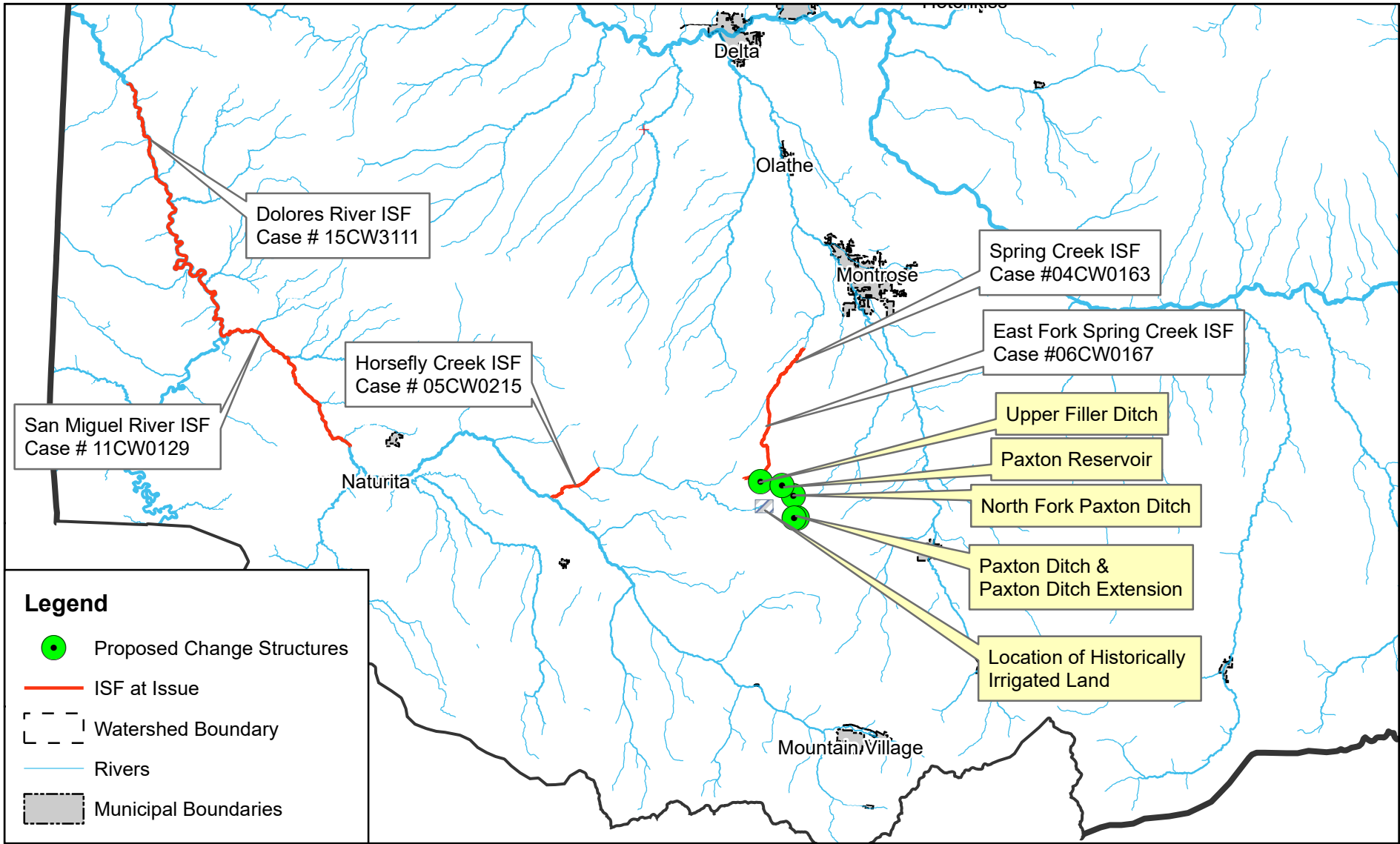
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.

**Other Objectors**

A Statement of Opposition was also filed by Southwestern Water Conservation District.

**Attorney Representing CWCB**

Philip E. Lopez, Assistant Attorney General, is assigned to this case and can be contacted at philip.lopez@coag.gov, or 720-508-6312.



**Legend**

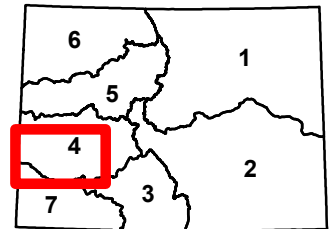
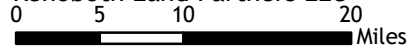
- Proposed Change Structures
- ISF at Issue
- Watershed Boundary
- Rivers
- Municipal Boundaries



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

Department of Natural Resources

November 20-21, 2019 CWCB Board Meeting  
 Consent Agenda Item 1.b: Statement of Opposition  
 Case No. 19CW3045, Div 4  
 Rehoboth Land Partners LLC



**IN THE DISTRICT COURT IN AND FOR  
WATER DIVISION NO. 4 STATE OF COLORADO**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 4  
Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of July 2019.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows: There has been filed in this proceeding a claim or claims which 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 as provided in the Water Right Determination and Administration Act of 1969, or be forever barred.

**CASE NO. 2019CW3045.** Montrose and Ouray Counties. Draw trib. to Horsefly Creek, trib. of the Uncompahgre River, Johnson Creek, trib. to Horsefly Creek, trib. to San Miguel River. **Application for Change of Water Rights.** Applicant: Rehoboth Land Partners, LLC, c/o Sara Dunn, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Applicant is the owner of the Paxton Reservoir water rights orig. decreed by the Water Court on 1/16/1967 in CA-9042, Dist. Court Montrose County, and the water rights used to fill Paxton Reservoir decreed to the N. Fork Paxton Ditch on 9/13/1971 in CA-2710, Dist. Court Ouray County, the Paxton Ditch and Paxton Ditch Extension decreed on 1/16/1967 in CA-9042, Dist. Court Montrose County, and the Upper Filler Ditch decreed on 4/13/1977 in Case No. W-2877, Dist. Court, Water Div. No. 4. The above described water rights were changed by decree dated 10/2/2008 in Case No. 07CW202, Dist. Court, Water Div. No. 4. Applicant seeks to change the water rights back to their orig. decreed types and places of use and to vacate the findings regarding quantification of hist. consumptive use contained in the decree entered in Case No. 07CW202. Structure: **N. Fork Paxton Ditch.** Orig. Decree: N. Fork Paxton Ditch was Orig. decreed in CA-No. 2710, Ouray County Dist. Court on 9/13/1971. Subsequent Decree: The decreed pt. of diversion for the N. Fork Paxton Ditch was changed to the actual pt. of diversion by the decree entered in Case No. 07CW202, Dist. Court, Water Div. No. 4 on 10/2/2008. The decree in Case No. 07CW202 also changed the place, time and type of use of the N. Fork Paxton Ditch from irr. of 700 acres to allow for irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. Decreed pt. of diversion: As corrected in Case No. 07CW202, the pt. of diversion for the N. Fork Paxton Ditch is located in the NW1/4 SW1/4 of Sec. 25, T. 46 N., R. 10 W., N.M.P.M. at a pt. 3750 ft. S. of the N. Sec. line and 25 ft. E. of the W. Sec. line of Sec. 25. Source: Draw trib. to Horsefly Creek, trib. of the Uncompahgre River, and from other drainages traversed by the Ditch, within the Horsefly Creek basin (trib. of the Uncompahgre River). Approp. date: 10/4/1962. Amt. decreed: 20 cfs, absolute. Decreed use: As changed in Case No. 07CW202, delivery of water into storage in Paxton Reservoir for subsequent irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. Remarks: The N. Fork Paxton Ditch delivers water from the Uncompahgre River basin to Paxton Reservoir, which is located in the San Miguel River basin; Paxton Reservoir can deliver water to both the San Miguel River basin and the Uncompahgre River basin. To the extent the N. Fork Paxton Ditch water is placed to beneficial use in the San Miguel River basin, the transbasin water may be used and reused to extinction. Structure: **Paxton Ditch and Paxton Ditch Extension.** Orig. Decree: Paxton Ditch and Paxton Ditch Extension were orig. decreed in CA-9042, Montrose County Dist. Court on 1/16/1967. Subsequent Decree: The decree in Case No. 07CW202 changed the place, time and type of use of the Paxton Ditch and Paxton Ditch Extension from irr. of the Hoffman Ranch and areas adjacent to Paxton Reservoir to irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. Decreed pts. of diversion: Paxton Ditch: Located at a pt. on the W. bank of Horsefly Creek whence the NW corner of

Sec. 27, T. 46 N., R. 10 W. of the N.M.P.M. bears N. 29 deg. 14 min. W. 8,257 ft. Paxton Ditch Extension: Located at a pt. on the W. bank of an unnamed trib. of Horsefly Creek at a pt. whence the N.W. corner of Sec. 3, T. 45 N., R. 10 W. of the N.M.P.M. bears N. 28 deg. 3 min. W. 8,394 ft. The existing uppermost pt. of diversion of the Extension is located in the SW1/4 SE1/4 of Sec. 34, T. 46 N., Ranch 10 W., N.M.P.M 3,000 ft. E. of the W. Sec. line and 150 ft. N. of the S. Sec. line of Sec. 34. Per the Stipulation with San Juan Ranch Owners Association in Case No. 07CW202, use of the diversion pt. for the Paxton Ditch Extension shall not be made at any pt. further S. than the Southern Sec. line of Sec. 34, T. 46 N., R. 10 W., N.M.P.M. Sources: Paxton Ditch: Horsefly Creek and the several draws and creeks traversed by the Ditch in its course trib. of the San Miguel River. Paxton Ditch Extension: Unnamed trib. of Horsefly Creek, from drainage and seepage along the line of the Ditch, and from the S. Fork of Horsefly Creek trib. of the San Miguel River. Approp. dates: Paxton Ditch: 10/2/1958. Paxton Ditch Extension: 8/11/1959. Amt. decreed: 27 cfs, absolute, combined diversion under Paxton Ditch and Paxton Ditch Extension. Decreed use: As changed in Case No. 07CW202, delivery of water into storage in Paxton Reservoir for subsequent irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. Remarks: The Paxton Ditch and Paxton Ditch Extension deliver water from the San Miguel River basin to Paxton Reservoir; Paxton Reservoir can deliver water to both the San Miguel River basin and the Uncompahgre River basin. Thus, to the extent the Paxton Ditch and Paxton Ditch Extension water is placed to beneficial use in the Uncompahgre River basin, the transbasin water may be used and reused to extinction. Structure: **Upper Filler Ditch**. Orig. Decree: The Upper Filler Ditch was orig. decreed in Case No. W-2877, Dist. Court, Water Div. No. 4, on 4/13/1977. Subsequent Decrees: The Court made 2.0 c.f.s. absolute and abandoned the balance in Case No. 79CW11, Dist. Court, Water Div. No. 4, entered on 9/18/1980. The decree in Case No. 07CW202 changed the place, time and type of use of the Upper Filler Ditch from irr. of 1,100 acres to allow for irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. Decreed Pt. of Diversion: The location of the Upper Filler Ditch, pursuant to the decree entered in Case No. 79CW11, Dist. Court, Water Div. No. 4, is from the vicinity of the NE corner of Sec. 20, T. 46 N., R. 10 W., N.M.P.M., as follows: "the application describes a pt. of diversion for the aforementioned 10 cfs as located 1,000 ft. S. of the NW Corner of NE1/4 NE1/4 Sec. 19, T. 46 N., R. 10 W., N.M.P.M.. A portion of the diversion ditch has been completed and is located in Sec. 16, 20 and 21, T. 46 N., R. 10 W., N.M.P.M. This portion is known as the upper filler ditch and is designed to pick up drainage and deliver it to the Paxton Reservoir." Source: Early spring flood water from Johnson Creek, trib. to Horsefly Creek, trib. to the San Miguel River. Approp. date: 6/1/1956. Amt. decreed: 2.0 cfs, absolute. Decreed uses: As changed in Case No. 07CW202, delivery of water into storage in Paxton Reservoir for subsequent irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. Structure: **Paxton Reservoir**. Orig. Decree: Paxton Reservoir was orig. decreed in CA-9042, Montrose County Dist. Court on 1/16/1967. Legal Description: Located in Montrose County, Colorado, in Sec. 21, T. 46 N., R. 10 W., N.M.P.M., and the E. end of the main dam thereto is located at a pt. whence the SE corner of said Sec. 21 bears S. 28 deg., 36 min. E. 1,991 ft. Source: Paxton Reservoir is an off-channel reservoir filled by diversions under the ditches described above. Approp. Date: 10/2/1958. Amt.: 717 AF, absolute. Decreed uses: As changed in Case No. 07CW202, irr. of up to 198.6 acres of lawn, landscape and golf course within the proposed Hideout Lake development. **PROPOSED CHANGES:** Applicant seeks to change the type of use of the water rights described above back to their orig. decreed uses. The decreed uses of the water rights are as follows: N. Fork Paxton Ditch: Storage in Paxton Reservoir for irr. of approx. 700 acres, and for stockwatering. Paxton Ditch: Irr. of 600 acres. Paxton Ditch Extension: Irr. of about 800 acres. Upper Filler Ditch: Irr., dom., pisc., rec. and stockwatering purposes on 1100 acres. Paxton Reservoir: Irr., dom., pisc., rec. and stockwatering purposes. Applicant seeks to change the place of use of the above described water rights back to the orig. decreed and hist. irrigated areas. A map depicting the hist. irr. areas as determined by the Water court in Case No. 07CW202 is on file with the Water Court as Exh. A to the Application. Applicant seeks to vacate the findings regarding the changes that were never implemented including the quantification of hist. consumptive use contained in the decree in Case No. 07CW202. Applicant requests that the water rights being changed herein return to their orig. decreed

uses and be limited by the terms and conditions in those decrees. The changes described herein will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed cond. water right. Name and address of owner 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 is or will be stored, including any modification to the existing storage pool: Applicant. (7 pgs. 1 exh.). **MONTROSE AND OURAY COUNTIES.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of September, 2019 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 a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at [www.courts.state.co.us](http://www.courts.state.co.us)). DARLEEN CAPPANNOKEEP, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401