

Consent Agenda Item 1.a

July 15-16, 2020 Board Meeting

Case No. 19CW3068 (Water Division 5); Piney Valley Ranches Trust

Water Court Application

Application for change of water rights to add alternate points of diversion and correct legal descriptions of decreed points of diversion.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Motion to Intervene and Statement of Opposition filed in May 2020 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 Colorado River Headwaters, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
86CW0229 (Div. 5)	Piney River	confl NF Piney River	confl Colorado River	9 (1/1 - 12/31)	01/16/1986
17CW3236* (Div. 5)	Piney River	confl Grape Creek	confl Colorado River	4 (12/01 - 03/31) 16 (04/01 - 04/30) 55 (05/01 - 07/15) 16 (07/16 - 08/15) 8 (08/16 - 11/30)	01/24/2017

* Pending in water court for increase to instream flow water right.

Potential for Injury

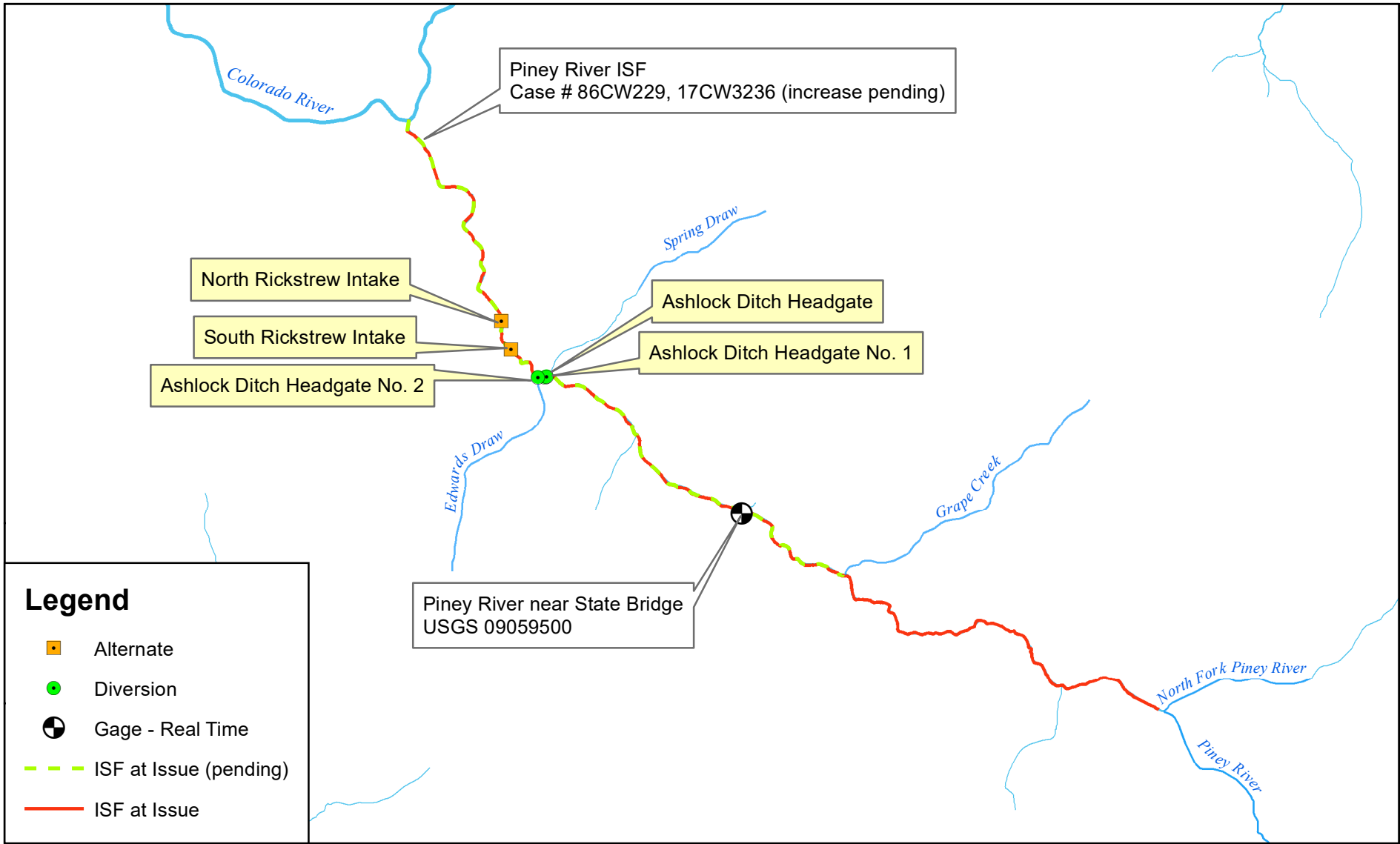
- The changes sought herein are claimed to have occurred prior to the pending instream flow adjudication in Case No. 17CW3236. The instream flow water right might be subject to the changes sought under C.R.S. 37-92-102(3)(b) under certain terms and conditions.
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of diversions and historical return flows, which could injure the CWCB's existing instream flow water right decreed in Case No. 86CW0229.

Other Objectors

A Statement of Opposition was also filed by JPO Ranch LLC.

Attorney Representing CWCB

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



Legend

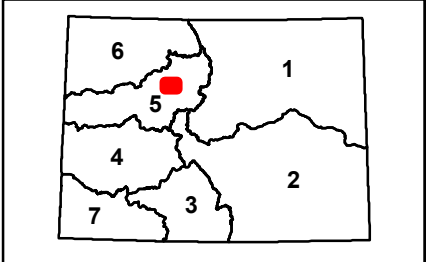
- Alternate
- Diversion
- ⊕ Gage - Real Time
- ISF at Issue (pending)
- ISF at Issue



COLORADO
Colorado Water Conservation Board
 Department of Natural Resources

July 15-16, 2020 CWCB Board Meeting
 Consent Agenda Item 1a. Statement of Opposition
 Case No. 19CW3068 (Division 5)
 Piney Valley Ranches Trust

0 1 2 4 Miles



DIVISION 5 WATER COURT- JUNE 2019 RESUME

3. 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 JUNE 2019. *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.*

19CW3068 Applicant: The Piney Valley Ranches Trust (“PVRT”), c/o Daniel J. Leary, Trustee, P.O. Box 9429, Avon, Colorado 81620, Phone: (970) 949-6776. Attorneys for PVRT: Richard A. Johnson, David F. Bower, Michael S. Davidson, Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027, Phone: (303) 442-1900. Application for Change of Water Rights to Add Alternate Points of Diversion and Correct Legal Descriptions of Decreed Points of Diversion in **EAGLE COUNTY**. Description of Water Rights for Which Change is Sought. Name of Structure. Ashlock Ditch. Original and Subsequent Decrees. Original Right. The Ashlock Ditch was originally decreed in the amount of 1.8 cfs, absolute, on November 20, 1890, by the Eagle County District Court, Water District 52 (Original Adjudication). The Original Right is decreed to divert off Piney Creek. Enlargement Right. An enlargement of the Ashlock Ditch was decreed in the amount of 4.05 cfs, absolute, on August 30, 1946, in Civil Action 1038, Eagle County District Court, Water District 52. Besides enlarging the Original Right decreed to divert off Piney Creek (referred to in the decree as Headgate No. 1), the Enlargement Right added a second headgate decreed to divert off Spring Creek (referred to in the decree as Headgate No. 2). Correction of Legal Description of Original Right. The legal description of the Ashlock Ditch from the Original Adjudication was corrected by the decree entered on June 26, 1996, in Case No. 95CW131, Water Division 5. Decreed Points of Diversion. Original Right (as Corrected in Case No. 95CW131). The headgate of the Ashlock Ditch is decreed as located on the west bank of Piney Creek at a point whence the SW corner of the SE1/4 of Section 6, Township 3 South, Range 82 West, bears 737 feet South 38° West. Enlargement Right (as Decreed in Civil Action 1038). Headgate No. 1. Headgate No. 1 of the ditch is decreed as located on the South or left bank of Piney Creek at a point whence the South Quarter corner of Section 6, Township 3 South, Range 82 West of the 6th P.M. bears South 53°40' West 880 feet. Headgate No. 2. Headgate No. 2 of the ditch is decreed as located on the West or left bank of Spring Creek at a point whence the South Quarter corner of Section 6, Township 3 South, Range 82 West of the 6th P.M. bears South 33°49' West 545 feet. Decreed Source. Original Right. Piney Creek. Enlargement Right. Headgate No. 1. Piney Creek. Headgate No. 2. Spring Creek. Appropriation Dates. Original Right. August 27, 1889. Enlargement Right. July 16, 1923. Total Amount Decreed to Structure. Original Right. 1.8 cfs, absolute. Enlargement Right. 4.05 cfs, absolute, in aggregate, with the following rate limitations on each headgate: Headgate No. 1. 2.95 cfs, absolute. Headgate No. 2. 4.05 cfs, absolute. Decreed Use. Irrigation. Amount of Water that PVRT Intends to Change to Alternate Points of Diversion. PVRT seeks the right to use the alternate points of diversion described below as additional points of diversion for the full amount decreed to the Ashlock Ditch as set forth above. Detailed Description of Proposed Changes. Complete Statement of Change. PVRT seeks to change the Ashlock Ditch water rights to include two alternate points of diversion on Piney Creek, approximately 2,653.0 and 4,492.8 feet downstream of the location of the headgate described in Case No. 95CW131. Water diverted under the Ashlock Ditch rights will continue to be used for irrigation purposes at the historical place of use. The combined flow rate and amount diverted from both the existing points of diversion and the alternate points of diversion will not exceed the total flow rate permitted to be diverted under the Ashlock Ditch rights, and the rate limitations imposed on Headgate Nos. 1 and 2 in Civil Action 1038 shall remain the same. As the time, place, and use of the Ashlock Ditch will not change as a result of the requested alternate points of diversion, this change will not result in injury to any owner of or person entitled to use water under a vested water right or a decreed conditional water right. A map showing the location of the subject structures and the cases in which they were decreed is attached hereto as Exhibit A. In addition, PVRT has discovered two additional corrections that need to be made to the previous decrees for the Ashlock Ditch water rights, as more particularly set forth below. Addition of Alternate Points of Diversion. The claimed alternate points of diversion for the Ashlock Ditch water rights are as follows: South Rickstrew Intake. The South Rickstrew alternate point of diversion is located in the NE1/4 SW1/4, Section 6, Township 3 South, Range 82 West, 6th P.M., at a point approximately 1,833

**Attachment
Consent Agenda Item 1.a
July 15-16, 2020**

feet east of the west section line and 2,078 feet north of the south section line (Zone 13 north, NAD83, Easting 361293.3m, Northing 4409073.3m). North Rickstrew Intake. The North Rickstrew alternate point of diversion is located in the SW/4 NW1/4, Section 6, Township 3 South, Range 82 West, 6th P.M., at a point approximately 1,193 feet east of the west section line and 1,776 feet south of the north section line (Zone 13 north, NAD83, Easting 361110.9m, Northing 4409549.2m). Corrections to Previous Decrees. PVRT also seeks to have the following corrections recognized for the previous Ashlock Ditch decrees as follows: Headgate No. 1. The Original Right decreed in the Original Adjudication and the Enlargement Right decreed in Civil Action 1038 have different legal descriptions for the point of diversion from Piney Creek (a/k/a Headgate No. 1). In Case No. 95CW131, the legal description for the Original Right was corrected, but the decree did not similarly correct the legal description for the Enlargement Right. Accordingly, by this application, PVRT seeks to correct the decree for the Ashlock Ditch entered in Case No. 95CW131 to make clear that the correction to the legal description for the point of diversion from Piney Creek applies to both the Original Right and the Enlargement Right. Headgate No. 2. The decree entered in Civil Action 1038 states that Headgate No. 2 is located on and diverts from Spring Creek. However, this appears to be a clerical error, as USGS mapping and the Division of Water Resources' records indicate that the decreed legal description of Headgate No. 2 is actually located on Edwards Draw, directly across Piney Creek from Spring Draw. Accordingly, PVRT seeks to correct the decreed source of water for Headgate No. 2 to be Edwards Draw. Name of Landowner upon which any New or Modified Diversion Structure is Located. The South Rickstrew Intake and North Rickstrew Intake points of diversion are located on land owned by PVRT. 7 pages

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of AUGUST 2019 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.