

Consent Agenda Item 1.b

July 15-16, 2020 Board Meeting

Case No. 20CW3013 (Water Division 4); JAK Ventures, LLC

Water Court Application

Application for underground water rights, change of water rights, and request for approval of plan for augmentation.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board 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 4 in the Lower Gunnison Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
14CW3093 (Div. 4)	East Creek	confl North East Creek	East Creek Ditch hdgt	1.6 (3/15 - 6/30) 0.25 (7/1 - 3/14)	01/28/2014
14CW3092 (Div. 4)	East Creek	East Creek Ditch hdgt	confl Gunnison River	1.6 (3/15 - 5/31)	01/28/2014

Potential for Injury

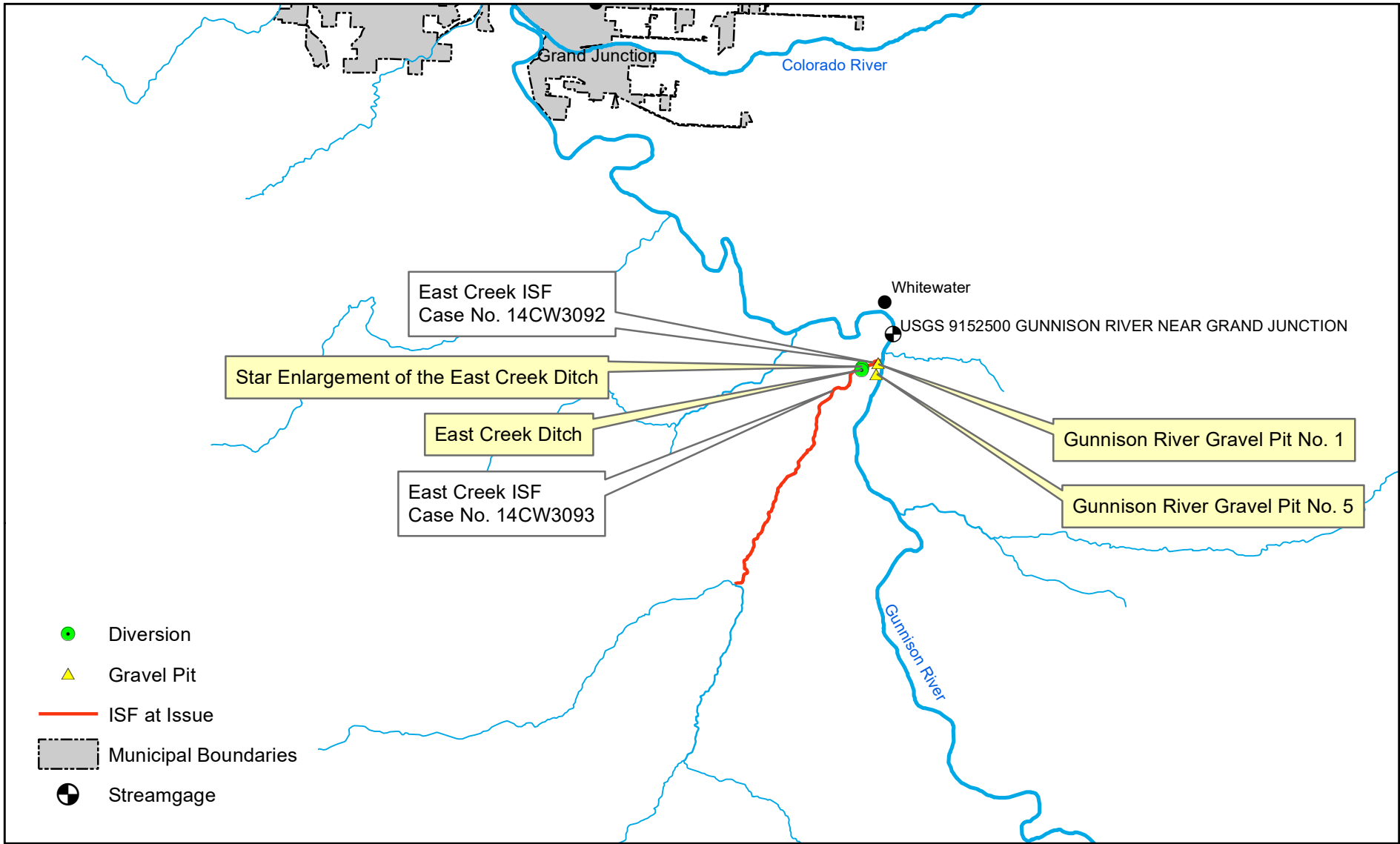
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- Some of the water rights are claimed with senior appropriation dates. The CWCB's instream flow water rights might be subject to these water rights under C.R.S. 37-92-102(3)(b) if the claimed pre-existing uses are sufficiently demonstrated.
- The proposed plan for augmentation may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

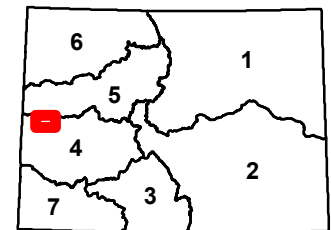
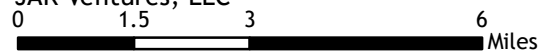
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

July 15-16, 2020 CWCB Board Meeting
 Consent Agenda Item 1b. Statement of Opposition
 Case No. 20CW3013 (Division 4)
 JAK Ventures, 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 March 2020. 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. 2020CW3013; Mesa County - Gunnison River; **JAK Ventures, LLC**; c/o Bruce C. Walters and John R. Pierce, Dufford, Waldeck, Milburn & Krohn, LLP, 744 Horizon Court, Suite 300, Grand Junction, CO 81506, (970) 248-5865; APPLICATION FOR UNDERGROUND WATER RIGHTS, CHANGE OF WATER RIGHTS, AND REQUEST FOR APPROVAL OF PLAN FOR AUGMENTATION; Name, address, and telephone number of Applicant: JAK Ventures, L.L.C., P.O. Box 1708, Dillon, CO 80435; (970) 513-4000; Request for underground water right: Name of well: Gunnison River Gravel Pit No. 1; Permit number: Well Permit No. 77503-F; Other information: Applicant will obtain a new well permit for the Gunnison River Gravel Pit No. 1 after issuance of a decree; Legal description of well: SE/4 of the SE/4 of Section 28, Township 12 South, Range 99 West, 6th P.M. at a point 258 feet from the south section line and 450 feet from the east section line; UTM Zone 12S, 720408mE; 4317082mN; Source: Groundwater tributary to the Gunnison River; Depth of pit well: 30 feet; Information regarding appropriation: Date of appropriation: March 10, 2011; How appropriation was initiated: With approval of a substitute water supply plan for the Gunnison River Gravel Pits Nos. 1 and 5 by the Colorado Division of Water Resources ("DWR"), in a letter dated March 10, 2011; Date water applied to beneficial use: October 1, 2019; Amount claimed: Amount claimed in a.f. annually: 16.55 a.f., including 15.41 a.f., conditional, and 1.14 a.f., absolute; Amount claimed in c.f.s.: 0.04 c.f.s., conditional, for evaporation, and 0.6 c.f.s., absolute, for dust suppression; If well operates pursuant to a decreed plan for augmentation: The augmentation plan for the Gunnison River Gravel Pit Well No. 1 is requested by this Application; Proposed use: Product moisture losses: 0.63 a.f., absolute, 0.37 a.f., conditional; Dust suppression: 0.51 a.f., absolute, 1.19 a.f., conditional; Evaporation: 13.85 a.f., conditional, from 3.6 acres of exposed groundwater which will remain upon completion of mining operations; Wildlife watering directly from the pit; Recreation; Fire protection; Request for underground water right: Name of well: Gunnison River Gravel Pit No. 5; Permit number: Well Permit No. 77503-F; Other information: Applicant will obtain a new well permit for the Gunnison River Gravel Pit No. 5 after issuance of a decree; Legal description of well: NE/4 of the SE/4 of Section 33, Township 12 South, Range 99 West, 6th P.M. at a point 2,125 feet from the south section line and 384 feet from the east section line; UTM Zone 12S, 720116mE; 4315987mN; Source: Groundwater tributary to the

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Gunnison River; Depth of pit well: 40 feet; Information regarding appropriation: Date of appropriation: March 10, 2011; How appropriation was initiated: With approval of a substitute water supply plan for the Gunnison River Gravel Pits Nos. 1 and 5 by DWR; Date water applied to beneficial use: January 1, 2014; Amount claimed: Amount claimed in a.f. annually: 30.05 a.f., including 24.60 a.f., conditional, and 5.45 a.f., absolute; Amount claimed in c.f.s.: For evaporation, 0.01 c.f.s., absolute, and 0.07 c.f.s., conditional; If well operates pursuant to a decreed plan for augmentation: The augmentation plan for the Gunnison River Gravel Pit Well No. 5 is requested by this Application; Proposed use: Product moisture losses: 0.69 a.f., absolute, 0.15 a.f., conditional; Dust suppression: 3.03 a.f., absolute; Evaporation: 1.73 a.f., absolute, for net evaporation from 0.45 acres of exposed groundwater remaining after initial mining commenced in 2014, and 24.45 a.f., conditional, for net evaporation from the remaining 6.35 acres of exposed groundwater upon completion of mining operations; Wildlife watering directly from the pit; Recreation; Fire protection; Request for change of water right: Decreed water right for which change is requested: Name of structure: East Creek Ditch; Date of original and relevant subsequent decrees: Decreed on February 2, 1890, in Civil Action No. 0273. A portion of the right of use associated with the East Creek Ditch was subsequently changed in Case No. 11CW32; Legal description: NW/4 NE/4 of Section 33, Township 12 South, Range 99 West, in the 6th P.M., at a point 23 feet from the north section line and 2,872 feet from the west section line; Decreed source of water: Surface flows in East Creek, tributary to the Gunnison River; Appropriation date: September 18, 1888; Total amount decreed to structure: 1.43 c.f.s., absolute, under the senior right to be changed under this claim, of which Applicant owns 50%, or 0.715 c.f.s. An additional 1.16 c.f.s. was decreed to East Creek Ditch as the Star Enlargement of the East Creek Ditch in Case No. CA-5812, of which Applicant owns 50%, or 0.58 c.f.s.; Decreed use: Irrigation; Amount of water to be changed: Applicant's portion of the East Creek senior ditch right has been used to irrigate 40 of the 80 acres historically irrigated with diversions from the East Creek Ditch. Here, Applicant requests to change 0.72 c.f.s. (40.18 a.f. annually) under the East Creek Ditch from irrigation to augmentation. The historical consumptive use credits associated with the dry-up of the 80 acres historically irrigated with diversions from the East Creek Ditch senior right are set forth in Exhibit 4 of the decree issued in Case No. 11CW32; Detailed description of change: Historic consumptive use credits from the dry up of 40 acres under the East Creek Ditch equates to 0.72 c.f.s., or 40.18 a.f. annually. The average monthly historic consumptive use of the East Creek Ditch associated with 40 of the 80 acres removed from irrigation is as follows:

April	May	June	July	August	September	October
2.55 a.f.	9.57 a.f.	11.29 a.f.	8.80 a.f.	5.51 a.f.	2.44 a.f.	0.02 a.f.

Applicant requests to change 0.72 c.f.s. (40.18 a.f. annually) under the East Creek Ditch from irrigation to augmentation to support the plans for augmentation; To the extent that the 0.72 c.f.s. changed right is not required to support the augmentation plan requested by this Application, Applicant will leave the water in East Creek; Request for change of water right: Decreed water right for which change is requested: Name of structure: Star Enlargement of the East Creek Ditch; Date of original and relevant subsequent decrees: The Star Enlargement of the East Creek Ditch was decreed on July 25, 1941, in Civil Action No. 5812; Legal description: NW/4 NE/4 of Section 33, Township 12 South, Range 99 West, in the 6th P.M. at a point 23 feet from the north section line and 2,872 feet from the west section line; Decreed source of water: Surface flows in East Creek, tributary to the Gunnison River; Amount and appropriation date: 0.36 c.f.s., absolute, with a July 26, 1914 appropriation date, of which 0.18 c.f.s. is owned by Applicant; 0.80 c.f.s., absolute,

with a November 1, 1939 appropriation date, of which 0.40 c.f.s. is owned by Applicant; Decreed use: Irrigation; Amount of water to be changed: Applicant's portion of the Star Enlargement of the East Creek Ditch junior right has been used to irrigate 40 of the 80 acres historically irrigated with diversions from the East Creek Ditch. Here, Applicant requests to change 0.58 c.f.s. (7.68 a.f. annually) under the Star Enlargement of the East Creek Ditch junior right from irrigation to augmentation. The historical consumptive use credits associated with the dry-up of the 80 acres historically irrigated with diversions from the Star Enlargement of the East Creek Ditch junior right are set forth in Exhibit 6 of the decree issued in Case No. 11CW32; Detailed description of change: Historic consumptive use credits from the dry up of 40 acres under the Star Enlargement of the East Creek Ditch equates to 0.58 c.f.s., or 7.68 a.f. annually. The average monthly historic consumptive use of the Star Enlargement of the East Creek Ditch associated with 40 of the 80 acres removed from irrigation is as follows:

April	May	June	July	August	September	October
0.81 a.f.	0.24 a.f.	2.71 a.f.	2.22 a.f.	1.49 a.f.	0.21 a.f.	0.00 a.f.

Applicant requests to change 0.58 c.f.s. (7.68 a.f. annually) under the Star Enlargement of the East Creek Ditch junior right from irrigation to augmentation to support the plan for augmentation; To the extent that the 0.58 c.f.s. changed right is not required to support the augmentation plan requested by this Application, Applicant will leave the water in East Creek; Request for approval of plan for augmentation: Name of structures to be augmented: Gunnison River Gravel Pit No. 1 & Gunnison River Gravel Pit No. 5; If structures decreed: Underground water rights for the Gunnison River Pits are requested in paragraphs 2 and 3, above; Water rights to be used for augmentation: Augmentation water will be obtained from the changed water rights associated with the East Creek Ditch and the Star Enlargement of the East Creek Ditch. To the extent that those changed rights are not sufficient to offset out-of-priority depletions, additional augmentation water will be obtained through a water supply contract with the Bureau of Reclamation for releases from Blue Mesa Reservoir; Blue Mesa Reservoir: Date of original decree and associated Case Nos.: Case No. 6981 was decreed on March 30, 1960 in Montrose County District Court; Case No. 80CW156 was decreed in the Division 4 Water Court on December 11, 1980; Type of water right: Storage; Legal description of storage structure: The initial point of survey of Blue Mesa Dam is located at a point on the right abutment being the intersection of the center line of the axis of the dam and of the center line of the outlet works tunnel, whence the SW corner of section 31, T49N, R4W, NMPM bears North 78°36'44" West a distance of 3,207.07 feet; Decreed source of water: Gunnison River; Appropriation date: November 11, 1957; Amount: 1,063,457 a.f.; Decreed use: Domestic, municipal, irrigation, stock watering, industrial, hydropower, piscatorial, wildlife watering, recreation, and other purposes; Statement of plan for augmentation: Potential downstream calling rights: The water rights involved in this case are tributary to the lower portions of the Gunnison River. The only senior downstream calling rights are held by the Redlands Power and Water Company ("Redlands") in the Redlands Power Canal. Redlands holds three separately decreed rights: 670 c.f.s., absolute, decreed in Civil Action No. 1927 with a July 31, 1905 appropriation date and a July 22, 1912 adjudication date ("Senior Redlands Right"); 80 c.f.s., absolute, decreed in Civil Action No. 8303 with a June 26, 1941 appropriation date and a July 22, 1912 adjudication date (together with the 100 c.f.s. right below, "Junior Redlands Rights"); 100 c.f.s., absolute, decreed in Case No. 94CW0228 with an October 1, 1994 appropriation date and a December 31, 1994 adjudication date (together with the 80 c.f.s. right above,

“Junior Redlands Rights”); Potential call period: To determine potential out-of-priority depletions under this plan for augmentation, Applicant considered the potential call periods for both the Senior Redlands Right and the Junior Redlands Rights during the extreme drought conditions that existed during calendar years 2002 and 2003; Depletions: Operations at the Gunnison River Pits will result in depletions to the Gunnison River. Depletions to the Gunnison River will result from: (1) consumptive losses (evaporation, dust suppression, and retained moisture), (2) de-watering, and (3) excavation filling.; Consumptive losses during and after operations: Consumptive losses associated with the Gunnison River Pits include: (1) evaporation from exposed groundwater surfaces, (2) use of water during de-watering for on-site dust suppression, and (3) moisture retained in product materials extracted from beneath the water table. Upon completion of mining operations at the Gunnison River Pits, consumptive losses will be fully attributable to evaporation from the 3.6-acre pit well at Pit No. 1 and the 6.8acre pit well at Pit No. 5; Operation of the plan: The requested plan provides for the replacement of out-of-priority depletions to the Gunnison River caused by sand and gravel mining operations at the Gunnison River Pits. Applicant will augment the out-ofpriority depletions from consumptive losses during and after operations through the dryup of 40 acres of formerly irrigated land under the East Creek Ditch and the Star Enlargement of the East Creek Ditch. The plan also utilizes the annual purchase of water stored in Blue Mesa Reservoir through a long-term water service contract. Applicant will utilize a phased approach for implementation of its plan for augmentation. During Phase I, Applicant will implement the plan to address potential out-of-priority depletions from the Gunnison River Gravel Pit No. 1 and evaporative losses from the existing 0.45-acre exposed groundwater surface at Gunnison River Gravel Pit No. 5. During Phase II, Applicant will implement the plan to provide additional replacement water necessary to offset out-of-priority depletions associated with renewed mining operations at Gunnison River Gravel Pit No. 5. Although the potential call period for the Senior Redlands Right during the calendar years of 2002 and 2003 did not include any call days during the months of May through October, Applicant has dedicated 40.18 a.f. of the dry-up credits from the East Creek Ditch to provide protection in the event of a drought exceeding the severity of the 2002-2003 event. Similarly, although the potential call period for the Junior Redlands Rights during the 2002-2003 drought did not include any call days during the months of July through October, Applicant has dedicated 7.68 a.f. of dry-up credits under the Star Enlargement of the East Creek Ditch to protect against more severe future droughts; Applicant will address out-of-priority depletions during the non-irrigation season through a water supply contract with the Bureau of Reclamation for releases from Blue Mesa Reservoir. Historic irrigation return flows including both surface returns and deep percolation associated with the 40-acre dry-up will be maintained to ensure protection of downstream water rights holders. Irrigation diversions formerly taken to irrigate the 40 acres will remain in East Creek, which discharges directly to the Gunnison River. Request for finding of integrated water supply system: Gunnison River Gravel Pits Nos. 1 and 5; Statement of integrated system: Confirming underground water rights for the Gunnison River Gravel Pits Nos. 1 and 5 is a critical feature of Applicant’s development plan and the Gunnison River Pits are part of an integrated water supply system necessary to serve the mining operations on Applicant’s property. As such, Applicant requests the Court to confirm that the Gunnison River Gravel Pit No. 1 and the Gunnison River Gravel Pit No. 5 are individual components of an integrated water supply system pursuant to C.R.S. § 37-92-301(4)(b) so that diligence shown for one of the rights shall constitute evidence of diligence for the other. (12 pages).

MESA COUNTY.

YOU ARE FURTHER NOTIFIED THAT you have until the last day of May, 2020 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). DARLEEN CAPPANNOKEEP, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401