

Consent Agenda Item 1.e

March 10-11, 2021 Board Meeting

Case No. 20CW3099 (Water Division 4); Quartz Creek Land Company

Summary of Water Court Application

Application for conditional water rights, change of water rights, and 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 February 2021 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water right in Water Division 4 in the Tomichi River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0086 (Div. 4)	Quartz Creek	confl Gold Creek	confl Tomichi Creek	5 (1/1 - 12/31)	03/17/1980

Potential for Injury

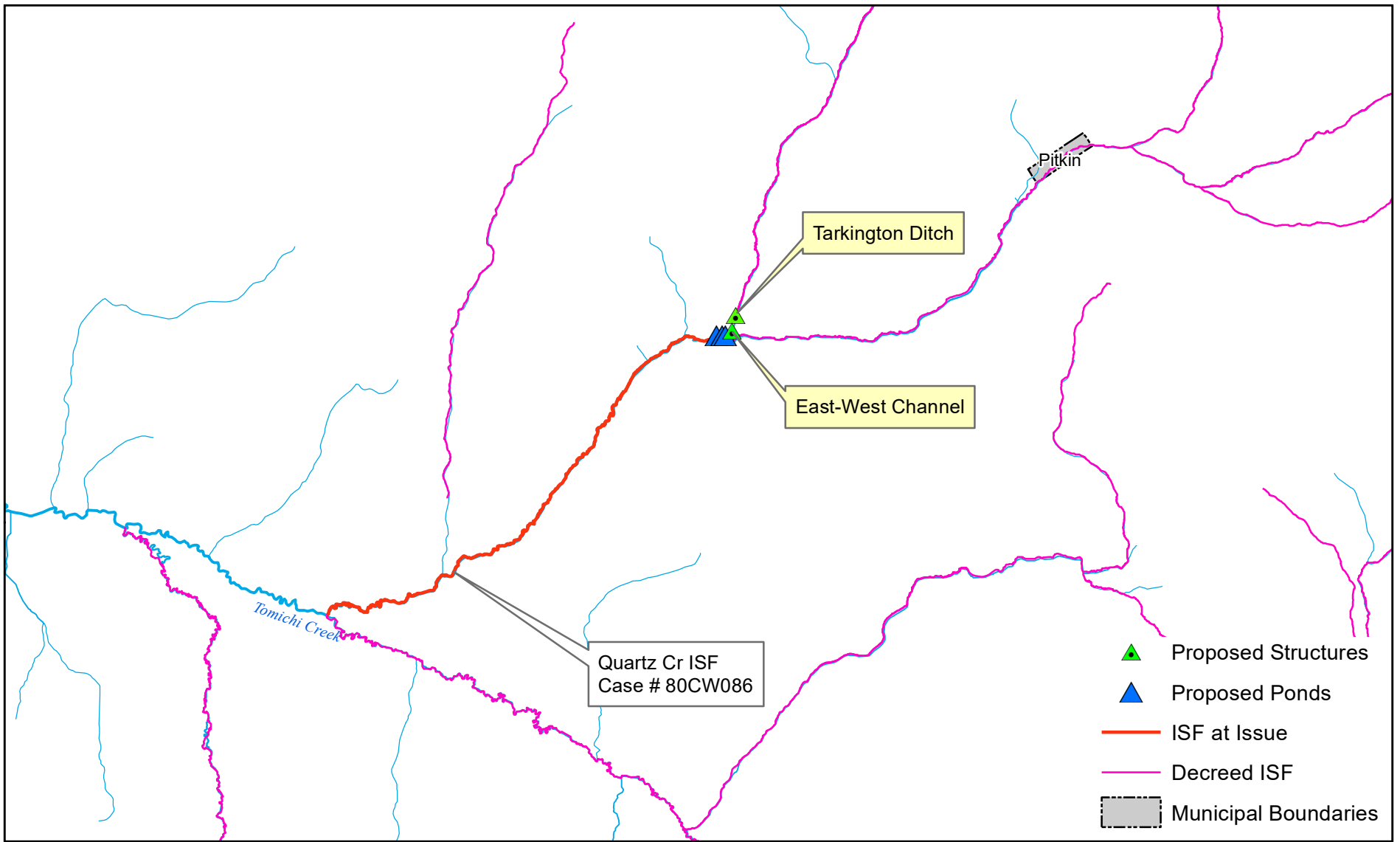
- The apparent flow-through water right could injure the CWCB's instream flow water right because it would be fully depletive to a segment of the intervening instream flow.
- The proposed change of water rights could cause an expansion of use and could alter the time, place, and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- 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 (as of February 24, 2021).

Attorney Representing CWCB

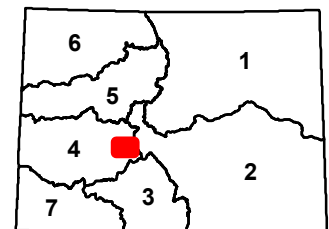
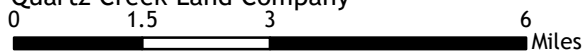
William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting
 Consent Agenda Item 1.e. Statement of Opposition
 Case No. 20CW3099 (Division 4)
 Quartz Creek Land Company



**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 December 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. 2020CW3099. Applicant Quartz Creek Land Company, c/o David H. Tippit, PO Box 24024, Denver, CO 80224, (303) 324-1862. Please address all correspondence to: Peter D. Nichols, Esq., Megan Gutwein, Esq., Berg Hill Greenleaf Ruscitti LLP, 1712 Pearl Street, Boulder, Colorado 80302, (303) 402-1600. APPLICATION FOR CONDITIONAL WATER RIGHTS, CHANGE OF WATER RIGHTS, AND PLAN FOR AUGMENTATION ON GOLD CREEK, TRIBUTARY TO QUARTZ CREEK, TRIBUTARY TO TOMICHI CREEK, TRIBUTARY TO THE GUNNISON RIVER, IN GUNNISON COUNTY. FIRST CLAIM: DIRECT FLOW WATER RIGHT. 2. Name of structure: East-West Channel. 3. Legal description of point of diversion: The point of diversion is located at approximately 1500 feet south of the north section line and 2450 feet east of the west section line (also described as whence the SE corner of Tract 49, T. 50 N., R. 3 E., N.M.P.M. bears North 29° West 225 feet) as described in Case No. 97CW157 as the alternate point of diversion for the Tarkington Ditch. See map, Exhibit 1. 4. Source: Gold Creek, tributary to Quartz Creek, tributary to Tomichi Creek, tributary to Gunnison River. 5. Appropriation: A. Date of initial appropriation: December 30, 2020. B. How appropriation was initiated: field investigation, formulation of intent to apply water to beneficial use and filing of this Application. 6. Amount claimed: 3.00 cfs, conditional. 7. Uses or proposed uses: to fill and refill the Quartz Creek Ranch East Pond Nos. 1-3 decreed herein and for piscatorial, wildlife habitat, recreation, irrigation, and aesthetic purposes after storage. 8. Total number of acres proposed to be irrigated: 74. 9. The landowner upon which this structure is located: Applicant. SECOND CLAIM: WATER STORAGE RIGHTS 10. Name of structures: Quartz Creek Ranch East Pond Nos. 1-3. 11. Legal description of location of dam centerlines: A. Quartz Creek Ranch East Pond No. 1: The centroid of Pond No. 1 is located at 359181 E, 4269877 N, UTM Zone 13 NAD83; in the SW1/4 of the NW1/4 of Section 26, T50N, R3E, N.M.P.M. 1,691 feet from the north section line and 1,277 feet from the west section line. B. Quartz Creek Ranch East Pond No. 2: The centroid of Pond No. 2 is located at 359274 E, 4269859 N, UTM Zone 13 NAD83; in the SE1/4 of the NW1/4 of Section 26, T50N, R3E, N.M.P.M. 1,745 feet from the north section line and 1,583 feet from the west section line. C. Quartz Creek Ranch East Pond No. 3: The centroid of Pond No. 3 is located at 359390 E, 4269847 N, UTM Zone 13 NAD83; in the SE1/4 of the NW1/4 of Section 26, T50N, R3E,

**Attachment
Consent Agenda Item 1.e
March 10-11, 2021**

N.M.P.M. 1,778 feet from the north section line and 1,964 feet from the west section line. See map, Exhibit 1. 12. Source: Gold Creek, tributary to Quartz Creek, tributary to Tomichi Creek, tributary to Gunnison River. 13. Appropriation: A. Date of initial appropriation: December 30, 2020. B. How appropriation was initiated: formulation of intent to apply water to beneficial use and filing of this Application. 14. Amount claimed: The total storage capacity of any number and combination of the subject ponds will not exceed 35 acre-feet. 15. How ponds are filled: The Quartz Creek Ranch East Ponds are off-channel structures, and will be filled by the 3.00 cfs delivered from the East-West Channel claimed herein when available. The Ponds will be filled and refilled when in priority or pursuant to the augmentation plan decreed herein. The Ponds may also be filled and refilled by the Tarkington Ditch, Carter Mine, and Raymond Mine water rights as described below and as changed herein when such changed water rights are in priority. 16. Uses or proposed uses: storage for subsequent piscatorial, wildlife habitat, recreation, irrigation, augmentation, and aesthetic purposes. 17. Description of Ponds: A. The surface area at the high water line for any combination of the subject ponds will not exceed 6 surface acres. B. The maximum height of the dam for any of the subject ponds will not exceed 10 feet. 18. Total number of acres proposed to be irrigated: 74. 19. The landowner upon which these structures are located: Applicant. THIRD CLAIM: CHANGE OF WATER RIGHTS 20. Names and descriptions of structures: A. Tarkington Ditch 1. Date of original decree: April 19, 1943 in Case No. CA2079. 2. Legal description of decreed points of diversion: The point of diversion is located on the West bank of Ohio Creek, also known as Gold Creek, a tributary of Tomichi Creek, at a point from which the Northwest corner of Section 26, Township 50 North, Range 3 East, N.M.P.M., bears North 74° 30' West 3926 feet, and the quarter corner stone between Sections 26 and 27 bears South 65° 30' West, 4095 feet. The alternate point of diversion is located at approximately 1500 feet south of the north section line and 2450 feet east of the west section line (also described as whence the SE corner of Tract 49, T. 50 N., R. 3 E., N.M.P.M. bears North 29° West 225 feet) as described in Case No. 97CW157.

See map, Exhibit 1. 3. Source: Gold Creek, tributary to Quartz Creek, tributary to Tomichi Creek, tributary to Gunnison River. 4. Appropriation Date: May 10, 1891. 5. Amount: 18.00 cfs, absolute. 6. Decreed Uses: Irrigation. B. Carter Mine 1. Date of original decree: July 7, 2020 in Case No. 19CW3011, Water Division 4. 2. Legal description of decreed point of diversion: The point of diversion is located at 361082 E, 4274905 N, UTM Zone 13 NAD83; NE1/4 NW1/4 Sec. 12, T50N, R 3E, 935 feet from the North section line and 1960 feet from the East section line. 3. Source: Gold Creek (formerly known as Ohio Creek), tributary to the Gunnison River. 4. Appropriation Date: February 27, 2019. 5. Amount: 3.0 cfs, conditional. 6. Decreed Uses: industrial including uses related to mining, milling, and ore processing. C. Raymond Mine 1. Date of original decree: July 7, 2020 in Case No. 19CW3011, Water Division 4. 2. Legal description of decreed point of diversion: The point of diversion is located at 376347.7 E, 4275639 N, UTM Zone 13 NAD83; NE1/4 NW1/4 Sec. 12, T50N, R 3E, 2296 feet from the North section line and 55 feet from the East section line. 3. Source: Gold Creek (formerly known as Ohio Creek), tributary to the Gunnison River. 4. Appropriation Date: February 27, 2019. 5. Amount: 3.0 cfs, conditional. 6. Decreed Uses: industrial including uses related to mining, milling, and ore processing. 21. Complete description of proposed change: A. Changes in use: Applicant proposes to change the water rights described in paragraph 20 to add storage in the Quartz Creek Ranch East Ponds, all decreed uses after storage under such rights, and augmentation as decreed beneficial uses. B. Alternate point of diversion: Applicant proposes to change the water rights described in paragraph 20 to add an alternate point of diversion

at the Tarkington Ditch alternate point of diversion shown above. Currently, only 2.5 cfs of the Tarkington Ditch water right is decreed for diversion at the alternate point. Applicant proposes to change its remaining portion of the Tarkington Ditch water right (13.5 cfs) to allow diversions at the alternate point, along with the entire decreed amounts of the Carter Mine and Raymond Mine water rights. C. Place of use: Applicant proposes to change the Carter Mine and Raymond Mine water rights to include the Quartz Creek Ranch as a decreed place of use, as depicted on Exhibit 1. FOURTH CLAIM: PLAN FOR AUGMENTATION 22. Names of structures to be augmented: Quartz Creek Ranch East Pond Nos. 1-3 as described above. 23. Water rights to be used for augmentation: Tarkington Ditch, Carter Mine, and Raymond Mine as described above. 24. Statement of plan for augmentation: The plan for augmentation is designed to provide a continuous water supply to the Quartz Creek Ranch East Pond Nos. 1-3 and replace out of priority depletions during times when there is a valid senior call on Gold Creek or Quartz Creek downstream of Gold Creek by foregoing diversions of the augmentation supplies at their decreed points of diversion and allowing the water to remain in Gold Creek. FIFTH CLAIM: INTEGRATED SYSTEM 25. Integrated System: The Applicant filed this Application to adjudicate additional water rights as components of an integrated water supply system, which includes existing decreed water rights, to supply water for the Quartz Creek Ranch including irrigation, piscatorial, wildlife habitat, recreation, and aesthetic uses. The system entails adjudicating the water rights claimed in this case, as well as other water rights on or tributary to Gold Creek and Quartz Creek, tributary to the Gunnison River. Such water rights include those originally adjudicated in Case No. 12CW156 for the Quartz Creek Ranch Habitat Enhancement Project. These structures and water rights constitute an integrated water supply system as defined by *Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992 (Colo. 1955), because each structure and water right in the system has a direct bearing on the functioning of the entire system. Therefore, work accomplished on one portion of this integrated system may be considered evidence of reasonable diligence on the part of Applicant as to the other portions of the system. C.R.S. § 37-92-301(4)(b). WHEREFORE, the Applicant prays this Court enter a decree: a) Granting the subject water rights and changes of water rights as applied for herein; and b) Granting such other and further relief as the Court deems proper. (9 pages, including 1 exhibit) **GUNNISON COUNTY**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of February, 2021 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). (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us). FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401