

Consent Agenda Item 1.o

March 10-11, 2021 Board Meeting

Case No. 20CW3185 (Water Division 5); Cornerstone Winter Park Holdings, LLC; Byers Peak Properties, LLC; Byers Peak Downhill Properties, LLC; C. Clark Lipscomb; and Meredith C. Lipscomb; Colorado Adventure Park LLC

Summary of Water Court Application

Application for Water Right.

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 rights in Water Division 5 in the Colorado River Headwaters Watershed, that could be injured by this application:

| Case Number | Stream | Upper Terminus | Lower Terminus | CFS Rate (Dates) | Approp. Date |
|--------------------------|-------------------|----------------------------|----------------------|--------------------------------------|--------------|
| 90CW0316 (Div. 5) | Saint Louis Creek | confl King Creek | hdgt Tyron Ditch div | 3.5 (9/16 - 5/14) 6 (5/15 - 9/15) | 11/27/1990 |
| 90CW0315 (Div. 5) | Fraser River | confl St Louis Creek | confl Ranch Creek | 11 (9/16 - 5/14) 17 (5/15 - 9/15) | 11/27/1990 |
| 90CW0308 (Div. 5) | Fraser River | confl Ranch Creek | confl Crooked Creek | 17 (5/15 - 9/15) 11 (9/16 - 5/14) | 11/27/1990 |
| 90CW0308 (Div. 5) | Fraser River | confl Crooked Creek | confl Colorado River | 30 (5/15 - 9/15) 19 (9/16 - 5/14) | 11/27/1990 |
| 80CW0446-448 (Div. 5) | Colorado River | hdgt Windy Gap Project div | confl Blue River | Varies 90-135 (1/1 - 12/31) | 07/08/1980 |

Potential for Injury

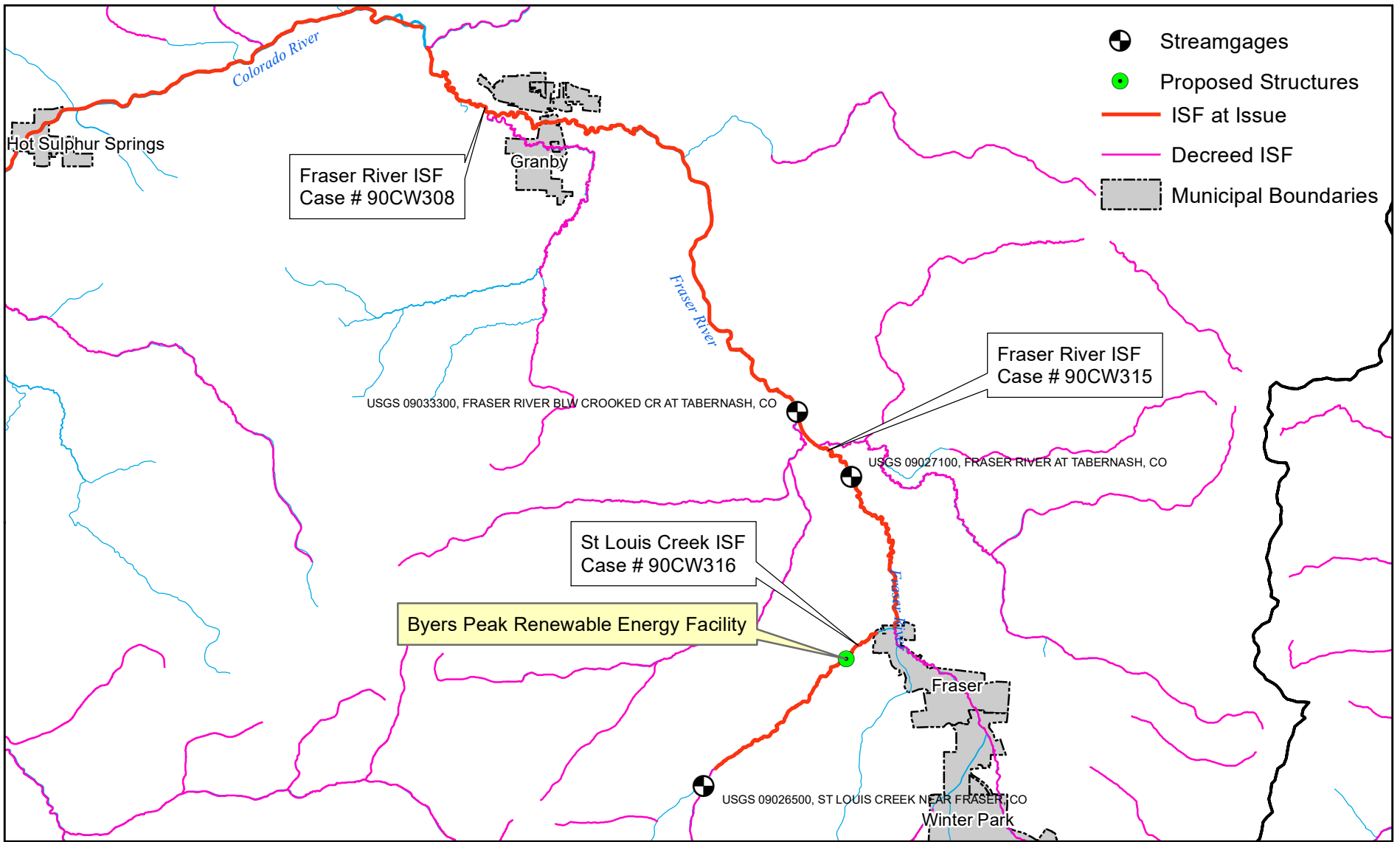
- The proposed 150 cfs hydropower water right could injure the CWCB's instream flow water rights because, depending on the ultimate project design, it could be fully depletive to a segment of the intervening instream flow, and could be partially consumptive, impacting downstream instream flow water rights.

Other Objectors

No other Statements of Opposition were filed (as of February 24, 2021).

Attorney Representing CWCB

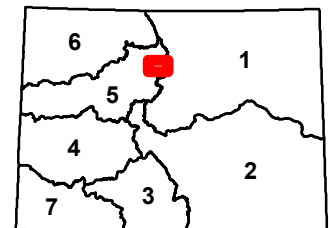
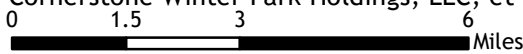
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting
 Consent Agenda Item 1.o. Statement of Opposition
 Case No. 20CW3185 (Division 5)
 Cornerstone Winter Park Holdings, LLC, et al.



DIVISION 5 WATER COURT-DECEMBER 2020 RESUME

SUBSTITUTE WATER SUPPLY PLAN 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 37-92-309(3)(a), C.R.S., notice of applications for following-leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

29. 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 DECEMBER 2020. *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.*

20CW3185 DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO, GRAND COUNTY – ST. LOUIS CREEK, TRIBUTARY TO THE FRASER AND COLORADO RIVERS. CORNERSTONE WINTER PARK HOLDINGS, LLC; BYERS PEAK PROPERTIES, LLC; BYERS PEAK DOWNHILL PROPERTIES, LLC; C. CLARK LIPSCOMB; and MEREDITH C. LIPSCOMB; COLORADO ADVENTURE PARK LLC c/o Kevin L. Patrick, Esq. and Jason M. Groves, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave., Basalt, CO 81621 (970) 920-1030. APPLICATION FOR WATER RIGHT. CLAIM: Application for new (surface) Water Right Name of structure: Byers Peak Renewable Energy Facility. Legal description: The plant is a kinetic run of the river facility located within St. Louis Creek in the NW1/4 SW1/4 of Section 19, Township 1 S., Range 75 W. of the 6th P.M., at a point 2,176 feet from the South section line and 108 feet from the West section line of said Section 19 (Grand County). A map is on file with the court as Exhibit A. Amount: 150.0 c.f.s., conditional. Use: Hydro-electrical generation. Owner of land upon which water right will be located and water used: Applicants, C. Clark and Meredith C. Lipscomb. Electricity generated may be used on or to offset power used on each of the applicants' properties as well as provided to the grid. Remarks: The design being employed is a run of the river kinetic energy generation plant which does not impound water and hence is non-consumptive in nature.

YOU ARE HEREBY 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 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.

**Attachment
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March 10-11, 2021**