

Consent Agenda Item 1.c

September 15-16, 2021 Board Meeting

Case No. 21CW3085 (Water Division 5); Elk Run Ranch Aspen Holdings, LLC and
4303 Snowmass Creek, LLC

Summary of Water Court Application

Application for conditional storage water rights.

Staff Recommendation

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

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-2941(1976)	Capitol Creek	outlet Capitol Lake	confl Snowmass Creek	10 (1/1 - 12/31)	01/14/1976
W-2943A (1976)	Snowmass Creek	confl W Snowmass Creek	confl Capitol Creek	12 (4/1 - 10/15) flowrate varies 7-12 (10/16 - 3/31)	01/14/1976
W-2943B (1976)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	12 (4/1 - 10/15) 11 (10/16 - 3/31)	1/14/1976
85CW0639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985
85CW0646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985
92CW0280*	Snowmass Creek	confl W Snowmass Creek	confl Capitol Creek	3 (4/1 - 10/15)	09/15/1992
92CW0281*	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	10.5 (4/1 - 10/15)	09/15/1992

* Increased

Potential for Injury

- The proposed flow through water right could injure the CWCB's instream flow water rights because it is fully depletive to the instream flow segments between the point of diversion and the location where water is returned to the stream and could be depletive to the downstream instream flow water rights.
- Applicant's claim for the off-channel "Elk Run Ranch Pond System, including any open channels connecting the ponds" may be in conflict with the ruling in *St. Jude's Co. v. Roaring Fork Club, L.L.C.*, 2015 CO 51, 351 P.3d 442 (Colo. 2015) (holding that

diversions for in-ditch aesthetic, recreational, and piscatorial use for the purpose of recreating a natural stream on private land are not diversions for beneficial use under Colorado water law).

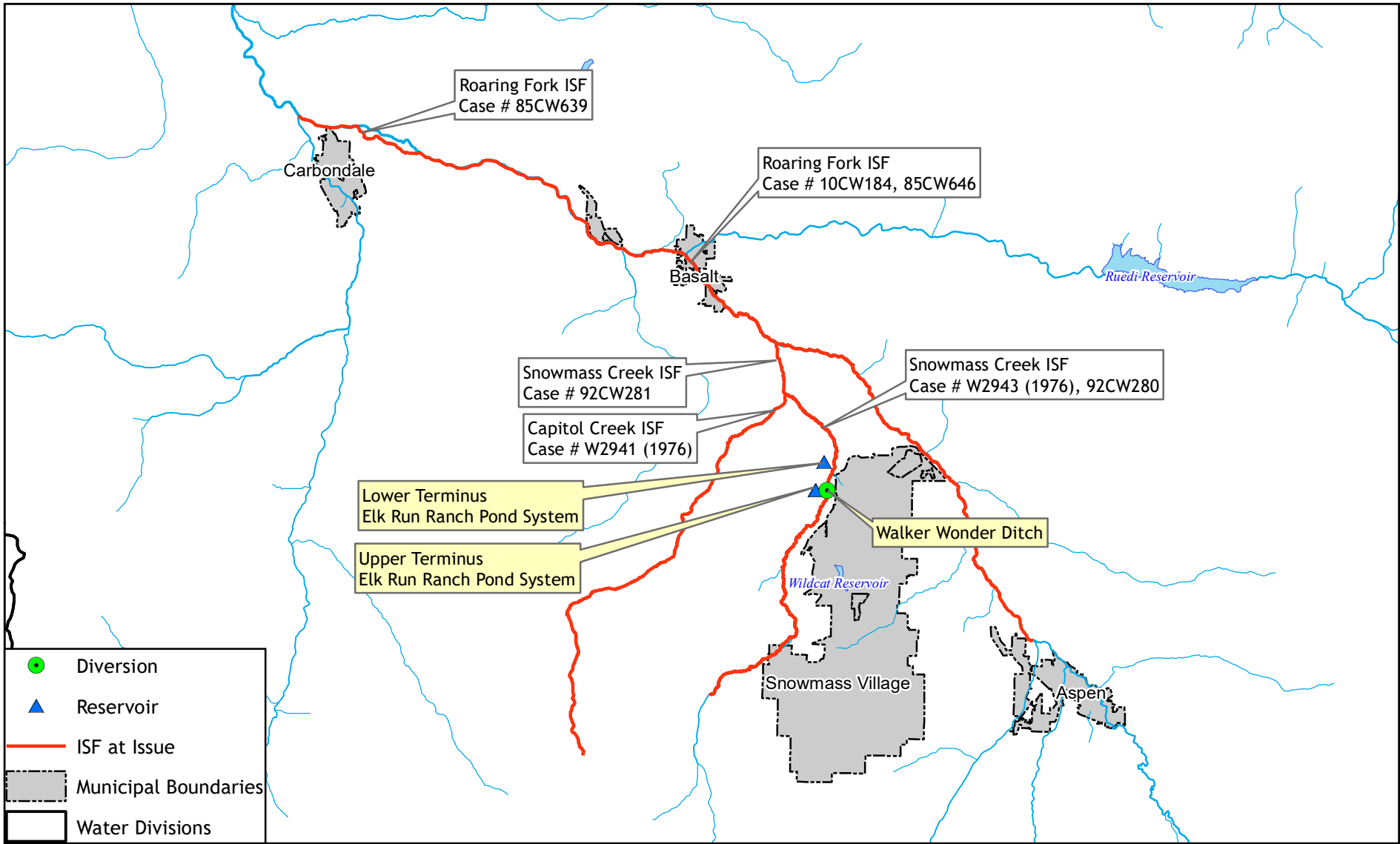
- It is unclear if the claimed senior irrigation uses can occur without a change of water rights.
- Terms and conditions should be included in the decree to ensure that the claimed water rights will not injure the CWCB's instream flow water rights and flows protected under Case No. 10CW184.

Other Objectors

Statements of Opposition were also filed by Lazy O Ranch Homeowners Association, Inc.; Quad III Trust Under Agreement Dated June 16, 1997; and, Gary S. Beck.

Attorney Representing CWCB

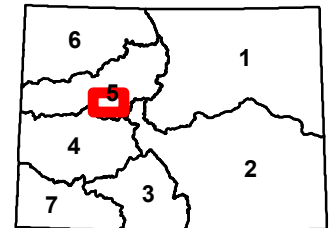
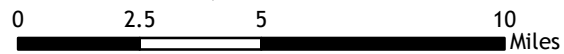
William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-628.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

September 15-16, 2021 CWCB Board Meeting
 Consent Agenda Item 1.c Statement of Opposition
 Case No. 21CW3085 (Division 5)
 Elk Run Ranch Aspen Holdings, LLC and 4303
 Snowmass Creek, LLC



DIVISION 5 WATER COURT-JUNE 2021 RESUME

2. 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 2021. *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.*

21CW3085 PITKIN COUNTY–SNOWMASS CREEK OR ITS TRIBUTARIES. ELK RUN RANCH ASPEN HOLDINGS, LLC and 4303 SNOWMASS CREEK, LLC c/o Ramsey L. Kropf, Somach Simmons & Dunn, 2033 11th St., Suite 5, Boulder, CO 80302, (303) 449-2834. APPLICATION FOR CONDITIONAL WATER STORAGE RIGHTS. Name of Structure: Elk Run Ranch Pond System. Legal Description: One or more off-stream ponds, including open channels and/or pipelines connecting the ponds, located on Applicant's 184.36-acre property in the S/2 of Section 11 and the N/2 of Section 14, Township 9 South, Range 86 West, of the 6th Principal Meridian in Pitkin County, Colorado. The lower terminus of the pond system is in the SW/4 NE/4 of Section 11, T9S, R86W, 6th P.M., in Pitkin County, Colorado (UTM NAD83 Zone 13 Easting 330957.0; Northing 4350197.0). The upper terminus of the pond system is in the NE/4 NW/4 of Section 14, T9S, R86W, 6th P.M. in Pitkin County, Colorado (UTM NAD83 Zone 13 Easting 330572.0; Northing 4348942.6). Applicant will specify the pond locations once the ponds are constructed and the water right is made absolute. The currently planned configuration of the Elk Run Ranch Pond System is shown in Figures 1 and 2 attached to the Application on file with the court. Source: Walker Wonder Ditch, diverting from Snowmass Creek, with a capacity of 70.0 cfs; Legal Description: The headgate of the Walker Wonder Ditch is located on the West bank of Snowmass Creek whence the Northeast Corner of Section 14, Township 9 South, Range 86 West of the Sixth Principal Meridian bears North 44°49' East a distance of 1630.42 feet. Appropriation Date: October 1, 2020. How appropriation was initiated: Formation of intent to appropriate paired with overt acts, including but not limited to inspection, survey and design of the system. Date water applied to beneficial use: N/A. Amount claimed: 9.0 acre-feet, conditional, cumulative for entire Elk Run Ranch Pond System, together with the right to fill and refill in priority or as augmented. Fill Rate not to exceed 2 cfs. Surface Area of High Water Line: Up to 1.94 acres for all ponds in the Elk Run Ranch Pond System, including any open channels connecting the ponds. Maximum Height of Dams: Less than 10 vertical feet. Maximum Length of Dams: Less than 2,000 feet. Active capacity: 9.0 acre-feet. Dead storage: 0 acre-feet. Uses or Proposed Uses: Fire protection, stock watering, recreation, aesthetic, piscatorial, evaporation, wildlife watering, and use as a pumping forebay(s) for direct flow irrigation water rights. Names of owners of land upon which this structure is located: Applicant. Remarks: The water right applied for herein is a component part of an integrated water supply plan for Applicant's property which includes the plan for augmentation and appropriate rights of exchange to be adjudicated through the application filed contemporaneously herewith.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of AUGUST 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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Sept 15-16, 2021**