

Consent Agenda Item 1.b

September 15-16, 2021 Board Meeting
Case No. 21CW3082 (Water Division 5); 153 LLC

Summary of Water Court Application

Application for conditional water storage right, change of water right, approval of plan for augmentation and conditional appropriative rights of exchange.

Staff Recommendation

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

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-2938(1976)	Woody Creek	headwaters	confl Roaring Fork River	6 (1/1 - 12/31)	01/14/1976
W-2948(1976)	Roaring Fork River	confl Difficult Creek	confl Maroon Creek	32 (1/1 - 12/31)	01/14/1976
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

Potential for Injury

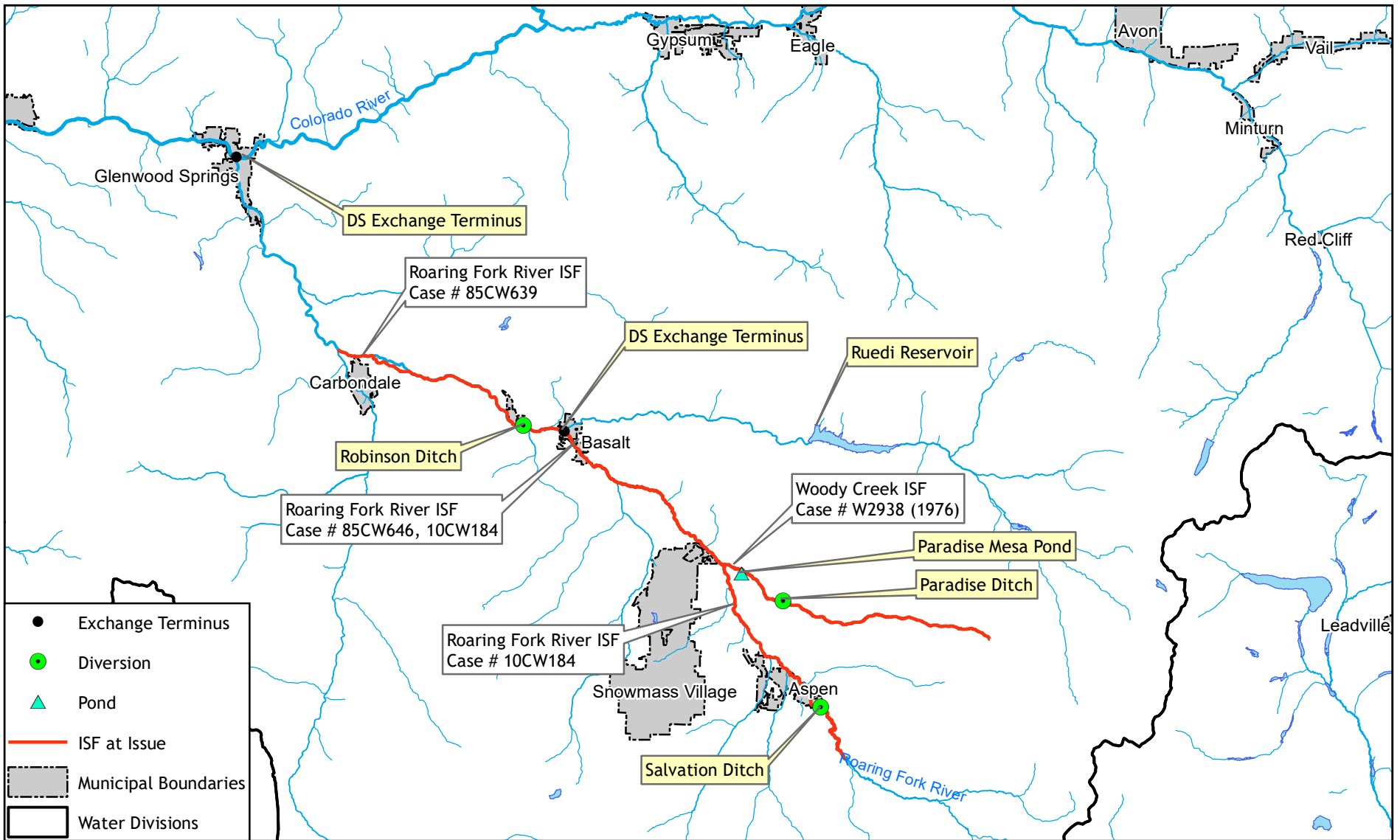
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The proposed change of water rights could cause an expansion of use and could alter the time, place, and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights and flows protected under Case No. 10CW184 (the CWCB's Stapleton Brothers' Ditch water rights).

Other Objectors

Statements of Opposition were also filed by the City of Aspen; Salvation Ditch Company; and, White Star Ranches Homeowners' Association.

Attorney Representing CWCB

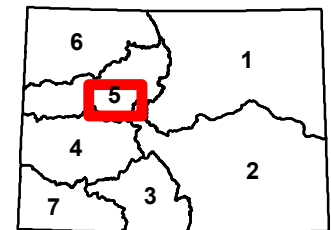
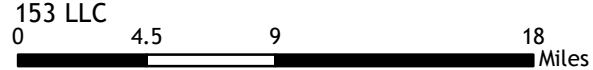
William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

September 15-16, 2021 CWCB Board Meeting
 Consent Agenda Item 1.b Statement of Opposition
 Case No. 21CW3082 (Division 5)
 153 LLC



DIVISION 5 WATER COURT-MAY 2021 RESUME

(This publication can be viewed in its entirety on the Colorado State Judicial website at: www.courts.state.co.us).

5. 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 MAY 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.*

21CW3082 PITKIN COUNTY, ROARING FORK RIVER. Application for Conditional Water Storage Right, Change of Water Right, Approval of Plan for Augmentation and Conditional Appropriative Rights of Exchange. **153 LLC** c/o Beattie Houpt & Jarvis, PO Box 1669, Basalt, 970-945-8659. Applicant owns approximately 153 acres of vacant agricultural land in Pitkin County that is irrigated with water from the Salvation Ditch and Paradise Ditch. Applicant intends to construct a residence and associated outbuildings, driveways, trails and other hardscape, and a pond; these improvements will permanently remove about 3.7 acres from the historically irrigated area. The pond will be constructed as part of a system to more efficiently irrigate portions of the property and will also provide recreational, aesthetic and other benefits. This Application claims a new water storage right for the pond and a plan for augmentation to replace evaporation from the pond. One source of replacement water will be consumptive use credits attributable to the dry up of about 3.7 acres historically irrigated with water from the Salvation Ditch. Replacement water may also be supplied to the Roaring Fork and Colorado Rivers from Ruedi Reservoir and other sources pursuant to a water allotment contract with the Basalt Water Conservancy District (“BWCD”) and exchanges of the BWCD water to points from which water may be diverted to fill the pond. The plan for augmentation and related exchanges are not critical to the continued irrigation operation, but merely allow the pond to be kept full as evaporation occurs and is therefore interruptible. To the extent that evaporation occurs at times when the plan cannot effectively avoid injury to senior water rights, Applicant will simply discontinue the replacement of evaporation from the pond until the plan can resume effective operation. Paradise Mesa Pond: Location: NW edge of pond is in the SW¼ NW¼ of Sec 15, T 9 S, R 85 W 6th PM at the following UTM coordinates: Easting: 338236, Northing: 4348555, Zone 13, NAD 83. Sources: Roaring Fork River, trib to Colo River, via the Salvation Ditch; and Woody Creek, trib to Roaring Fork River and Colo Rivers, via the Paradise Ditch; and local snowmelt and runoff captured by the pond, which is tributary to Woody Creek, the Roaring Fork and Colo Rivers; and consumptive use credits resulting from the dry up of lands historically irrigated by Applicant’s shares in the Salvation Ditch, described below. Ditches used to fill reservoir: Salvation Ditch, the point of diversion of which is located in the NW¼SW¼ Sec 17, T 10 S, R 84 W 6th PM at the following UTM coordinates: Easting: 344305, Northing: 4338366, Zone 13, NAD 83, Pitkin County. The capacity of the Salvation Ditch is in excess of 58.0 c.f.s. The water will be diverted from the Salvation Ditch at Applicant’s headgate; and Paradise Ditch, the point of diversion of which is located in the NW¼SW¼ Sec 24, T 9 S, R 85 W 6th PM at the following UTM coordinates: Easting: 341396, Northing: 4346490, Zone 13, NAD 83, Pitkin County. The capacity of the Paradise Ditch is in excess of 25.0 c.f.s. Appropriation date: 05/28/21. Amount: 4.2 af. Max rate of diversion: 0.5 cfs. Uses: Recreation, piscatorial, wildlife habitat and watering, and aesthetic uses. Surface area: 0.62 acres. Vertical height: Less than 10 ft. Length: Approx 320 ft. Total capacity: 4.2 af. Active capacity: 4.2 af. Dead storage: None. Paradise Mesa Pond will be filled and refilled continuously with water diverted and delivered into the pond pursuant to this water storage right and used *in situ* for recreation, piscatorial, wildlife habitat and watering, and aesthetic uses. The pond will be lined to prevent seepage. The pond will also be used as an irrigation control structure to facilitate the application of direct-flow irrigation rights in the Salvation and Paradise Ditches. Direct-flow irrigation water delivered into the pond will be retained temporarily in the pond for no more than 72 hours before being applied to the irrigation of Applicant’s property. Name of structure to be changed: Salvation Ditch: Original decree entered 12/15/1906 in CA 1221. Location: The decreed point of diversion of the Salvation Ditch is on the N bank of the Roaring Fork River at a point whence the E quarter corner of Sec 7, T 10 S, R 84 W 6th PM bears N 2°48’ W 5,633.4 ft. The UTM coordinates for this location, as described in the Colo Decision Support System, are UTM x 344305, UTM y 4338366, Zone 13, NAD 83. Source: Roaring Fork River. Appropriation date: 08/02/1902. Amount: 58 cfs. Use: Irrigation. Amount of water Applicant intends to change: 0.19 cfs. Proposed change: Applicant owns 1,195 shares of the Salvation Ditch Company, being 9.96% of the 12,000 shares issued by the Company, which equates to 5.78 cfs of the 58 cfs water right described above (referred to herein as “Applicant’s Salvation Ditch Water”). Applicant’s Salvation Ditch Water has been used historically to irrigate 113.8 acres within Parcel 8, First Amended Plat of Craig Ranch Parcels, according to the Plat thereof recorded 06/20/06 in Plat Book 79 at Page 81, Rec No. 525477, Pitkin County, Colo (“Applicant’s Property”). Applicant intends to develop a portion of Applicant’s Property by constructing a residence, associated outbuildings, driveways, trails and other hardscape, and a pond, which collectively will permanently remove 3.7 acres from the historically irrigated area (“Dry Up Area”). Wright Water Engineers estimates that the annual historical consumptive use associated with the irrigation of the 3.7 acres that comprise the Dry Up Area is 4.14 af, distributed monthly. These historical consumptive use credits will be stored in Paradise Mesa Pond and used for augmentation purposes as part of the plan for augmentation described herein.

Structure to be augmented: Paradise Mesa Pond. Water rights to be used for augmentation: Consumptive use credits attributable to the permanent dry-up of land historically irrigated by Applicant's shares in the Salvation Ditch; and 1.0 af annually available to Applicant pursuant to a Water Allotment Contract with BWCD, for which Applicant will make application. Water available pursuant to that contract includes water rights in Green Mountain Reservoir, Ruedi Reservoir, the Troy & Edith Ditch and the Robinson Ditch. Applicant is the owner of 1,195 shares of the Salvation Ditch Company and intends to change a fraction of its shares for use as a source of augmentation water as described herein. Statement of plan for augmentation: Paradise Mesa Pond (the "Pond") will be filled and refilled continuously with water diverted and delivered into the Pond pursuant to the water storage right described in Applicant's First Claim herein (the "Water Storage Right"). When a valid administrative call is being enforced that would otherwise require the curtailment of the Water Storage Right, Applicant may continue to fill the Pond using consumptive use credits. Applicant has ample consumptive use credits during the months of June through September to replace all evaporation from the Pond in this manner; however, in April, May and October, evaporative losses will exceed the available supply of consumptive use credits. When a valid administrative call is being enforced that would otherwise require the curtailment of the Water Storage Right during April, May and October, out-of-priority depletions to Woody Creek and/or the Roaring Fork River will be replaced with water delivered into the Roaring Fork and/or Colorado Rivers from sources identified in and pursuant to Applicant's BWCD Water Allotment Contract. When conditions permit, the BWCD water will be exchanged to the point of diversion of either (or both) the Salvation Ditch or the Paradise Ditch, depending upon which source is being used to refill the Pond, pursuant to the appropriate rights of exchange described herein. When there is no exchange opportunity that may be exercised in priority, additional deliveries of water into storage in the Pond will cease until exercise of the Water Storage Right may resume either under its own priority or pursuant to this plan for augmentation. Paradise Pond Salvation Ditch Frying Pan Exchange: Downstream terminus: Confluence of the Frying Pan and Roaring Fork Rivers, described as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 7, T 8 S, R 86 W 6 PM having the following UTM coordinates: Easting: 324757m, Northing 4359428m, NAD 83, Zone 13, Eagle County.

Upstream terminus: Point of diversion of Salvation Ditch. Source: Water attributable to the BWCD's interest in Troy & Edith Ditch and Ruedi Reservoir and delivered into the Frying Pan River pursuant to Applicant's BWCD Contract. Appropriation date: May 28, 2021. Max volume and rate: 1.0 af annually at a maximum rate of 0.5 cfs. Use: Augmentation and to fill and refill Paradise Mesa Pond. Paradise Pond Salvation Ditch Robinson Ditch Exchange: Downstream terminus: Point of diversion of the Robinson Ditch, the decreed location of which is on the N bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Sec 11, T 8 S, R 87 W, 6th PM and which may also be located by the following UTM coordinates: Easting: 321622m, Northing: 4359863m, NAD 83, Zone 13,

Eagle County. Upstream terminus: Point of diversion of Salvation Ditch. Source: Water attributable to the BWCD's interest in water rights decreed to the Robinson Ditch and bypassed into the Roaring Fork River pursuant to Applicant's BWCD Contract. Appropriation date: May 28, 2021. Max volume and rate: 1.0 af annually at a max rate of 0.5 c.f.s. Use: Augmentation and to fill and refill Paradise Mesa Pond. Paradise Pond Salvation Ditch Green Mountain Exchange: Downstream terminus: Confluence of the Roaring Fork and Colo Rivers which is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 9, T 6 S, R 89 W 6th PM, having the following UTM coordinates: Easting: 229751m, Northing: 4380373m, NAD 83, Zone 13, Garfield County. Upstream terminus: Point of diversion of Salvation Ditch. Source: Water attributable to the BWCD's interest in Green Mountain Reservoir and delivered into the Colorado River pursuant to Applicant's BWCD Contract. Appropriation date: 05/28/21. Max volume and rate: 1.0 af annually at a max rate of 0.5 cfs. Use: Augmentation and to fill and refill Paradise Mesa Pond. Paradise Pond Paradise Ditch Frying Pan Exchange: Downstream terminus: Confluence of the Frying Pan and Roaring Fork Rivers, described as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 7, T 8 S, R 86 W 6th PM having the following UTM coordinates: Easting: 324757m, Northing 4359428m, NAD 83, Zone 13, Eagle County. Upstream terminus: Point of diversion of Paradise Ditch. Source: Water attributable to the BWCD's interest in Troy & Edith Ditch and Ruedi Reservoir and delivered into the

Frying Pan River pursuant to Applicant's BWCD Contract. Appropriation date: 05/28/21. Max volume and rate: 1.0 af annually at a max rate of 0.5 c.f.s. Use: Augmentation and to fill and refill Paradise Mesa Pond. Paradise Pond Paradise Ditch Robinson Ditch Exchange: Downstream terminus: Point of diversion of the Robinson Ditch, the decreed location of which is on the N bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Sec 11, T 8 S, R 87 W 6th PM and which may also be located by the following UTM coordinates: Easting: 321622m, Northing: 4359863m, NAD 83, Zone 13, Eagle County. Upstream terminus: Point of diversion of Paradise Ditch. Source: Water attributable to the BWCD's interest in water rights decreed to the Robinson Ditch and bypassed into the Roaring Fork River pursuant to Applicant's BWCD Contract. Appropriation date: 05/28/21. Max volume and rate: 1.0 af annually at a max rate of 0.5 cfs. Use: Augmentation and to fill and refill Paradise Mesa Pond. Paradise Pond Paradise Ditch Green Mountain Exchange: Downstream terminus: Confluence of the Roaring Fork and Colo Rivers which is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 9, T 6 S, R 89 W 6th PM, having the following UTM coordinates: Easting: 229751m, Northing: 4380373m, NAD 83, Zone 13, Garfield County. Upstream terminus: Point of diversion of Paradise Ditch. Source: Water attributable to the BWCD's interest in Green Mountain Reservoir and delivered into the Colorado River pursuant to Applicant's BWCD Contract. Appropriation date: 05/28/21. Max volume

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and rate: 1.0 af annually at a max rate of 0.5 cfs. Use: Augmentation and to fill and refill Paradise Mesa Pond. The combined rate and volume of all exchanges claimed herein shall not exceed 1.0 acre feet annually at a maximum rate of 0.5 cfs. (12 pages)

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