

Consent Agenda Item 1.c

November 17-18, 2021 Board Meeting

Case No. 21CW3039 (Water Division 4); Tri-State Generation and Transmission Association, Inc.

Summary of Water Court Application

Application for change of water right.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in October 2021 to protect CWCB's instream flow water rights and to protect CWCB's exclusive authority to hold instream flow water rights.

The CWCB holds water rights, including the following instream flow water rights in Water Division 4 in the Lower Dolores River and San Miguel River Watersheds, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
11CW0129	San Miguel River	confl Calamity Draw	confl Dolores River	325 (4/15 - 6/14) 170 (6/15 - 7/31) 115 (8/1 - 8/31) 80 (9/1 - 2/29) 115 (3/1 - 4/14)	01/25/2011
15CW3111	Dolores River	confl San Miguel River	bridge located	900 (4/15 - 6/14) 400 (6/15 - 7/15) 200 (7/16 - 8/14) 100 (8/15 - 3/15) 200 (3/16 - 4/14)	01/28/2014

Potential for Injury

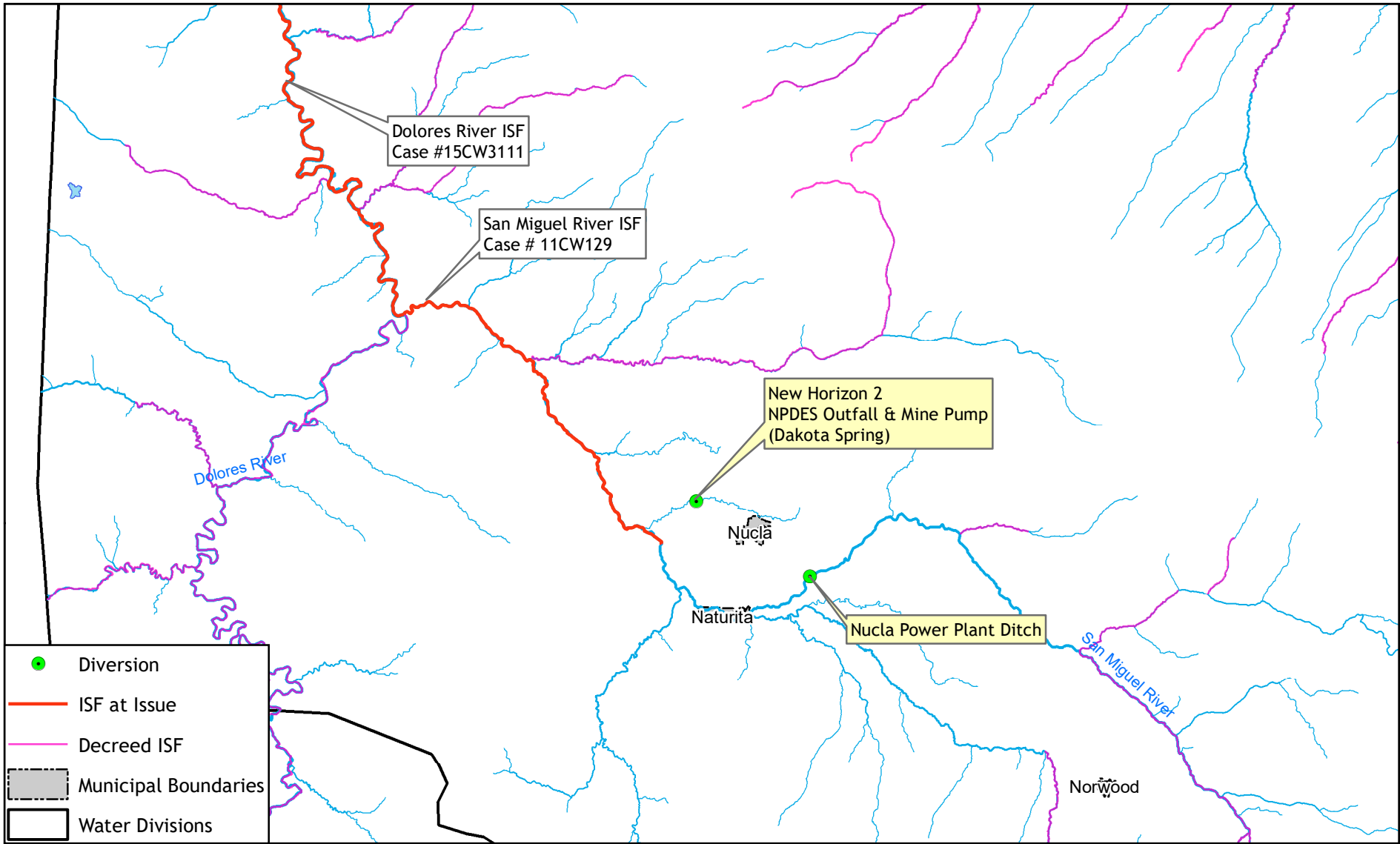
- One of Applicant's claimed uses under the proposed change of water right is environmental use. It is unclear what Applicant intends by this claimed use. If Applicant intends to use the water as an instream flow right, CWCB has exclusive authority to hold instream flow water rights. Applicant would need to request a contract or other agreement with CWCB for instream flow use of the water.
- 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.

Other Objectors

Statements of Opposition were also filed by Colorado Cooperative Company, Colorado Parks and Wildlife, Public Service Company of Colorado, Southwestern Water Conservation District, Town of Naturita, TSG Ski & Golf, LLC and Town of Mountain Village, United States of America - Department of the Interior- Bureau of Land Management, Uncompahgre Field Office, and Western Resource Advocates.

Attorney Representing CWCB

Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.

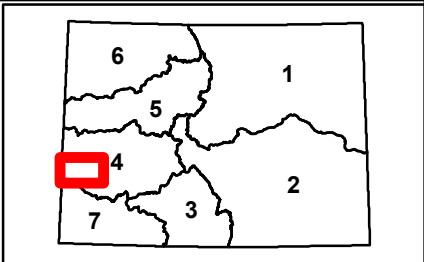
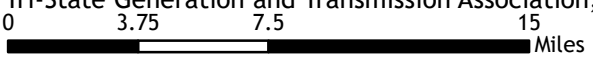


- Diversion
- ISF at Issue
- Decreed ISF
- Municipal Boundaries
- Water Divisions



COLORADO
Colorado Water Conservation Board
 Department of Natural Resources

November 17-18, 2021 CWCB Board Meeting
 Consent Agenda Item 1.c Statement of Opposition
 Case No. 21CW3039 (Division 4)
 Tri-State Generation and Transmission Association, Inc.



**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 August 2021.

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:

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.

CASE NO. 2021CW3039. TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. ("Tri-State"), Attn: Michael G. Sorensen, Vice President, Fuel and Water Resources, Tri-State Generation and Transmission Association, Inc., 1100 West 116th Ave., Westminster, Colorado 80234; E-mail: mgsorensen@tristategt.org; Telephone: (303) 452-6111. Please direct all correspondence concerning this Application to: Aaron S. Ladd, Esq. and Kunal A. Parikh, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, Colorado 80301; E-mail: asl@vrlaw.com; kap@vrlaw.com; Telephone: (303) 443-6151; and Roger T. Williams, Esq., Tri-State Generation and Transmission Association, Inc., 1100 West 116th Avenue, Westminster, Colorado 80234; E-mail: rwilliams@tristategt.org; Telephone: (303) 254-3218.

APPLICATION FOR CHANGE OF WATER RIGHT IN MONTROSE COUNTY. 2. Decreed Water Rights for Which Change is Sought. A map of the current points of diversion of the water rights listed in this section is provided as **Exhibit A. a. BCD Ditch and the Extension of the BCD Ditch, Priority No. 9, Priority No. 72, Priority No. 99:** i. Date of Original Decree: The BCD Ditch water rights were originally decreed in Civil Action No. 1627, Water District No. 60, District Court, Montrose County, State of Colorado, dated June 3, 1911, and include priority No. 9, Priority No. 72, and Priority No. 99. ii. Previous change decrees: (1) On July 10, 1958, as amended June 10, 1959, in Civil Action No. 7945, Application of Colorado-Ute Electric Association, Inc., the District Court of Montrose County, State of Colorado, approved a change of Tri-State's one-half interest in the BCD Ditch, Priority Nos. 9, 72, and 99, adding industrial use to the decreed irrigation use of this water right and changing the point of diversion to the Nucla Power Plant Ditch, described in paragraph 2.a.iii.(2) below. (2) On October 12, 2005, in Case No. 02CW261, Water Division 4, State of Colorado, Tri-State, as co-applicant, changed the BCD Ditch priorities described herein to allow diversion at the headgate of the Highline Canal as an alternate point of diversion. iii. Legal Description of Structure: (1) Original point: Located on the south or left bank of the San Miguel River at a point whence the Northeast Corner of Section 29, Township 46 North, Range 15 West of the N.M.P.M., bears South 31° **West 1,150 feet.** (2) Changed Point of Diversion (CA 7945): Commencing at a point whence the Northeast Corner of Section 15, Township 46 North, Range 15 West of the N.M.P.M., bears North 13°17' **East 4,402.2 feet; thence North 50°00' West 1,482 feet, more or less, being a point on the south or left bank of the San Miguel River, approximately 250 feet north northwest of the north side of the Nucla Power Plant.** (3) Alternate point of Diversion (02CW261): Located in the NE1/4 of the SW1/4 of Section 30, Township 46 North, Range 13 West of the N.M.P.M., at a

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point 2,250 feet from the South line and 2,500 feet from the West line of said Section 30, more or less. iv. Source: San Miguel River. v. Appropriation Date: Priority 9, October 1, 1885; Priority 72, December 1, 1894; Priority 99, November 26, 1900. vi. Decreed Amount: Priority 9, 0.5 cfs of 1.0 cfs; Priority 72, 2.5 cfs of 5.0 cfs; Priority 99, 0.75 cfs of 1.5 cfs. Such amounts totaling 3.75 cfs are Applicant's one-half interest in the originally decreed amounts for each priority. vii. Uses: Irrigation Use. viii. Remarks: Case No. 02CW261 confirmed a historical practice of diverting the water right specified in that decree at the Highline Canal headgate and delivering the same back to the San Miguel River for delivery to the decreed points of diversion of each said water right. This change does not intend to alter that historical practice. Further, certain terms and conditions contained in the change granted in Civil Action No. 7945 are unnecessary to prevent injury as a consequence of the change presented herein. b. Nucla Power Plant Ditch: i. Date of Original Decree: The Nucla Power Plant Ditch water right was decreed in Civil Action No. 9042, Water District No. 60, District Court, Montrose County, State of Colorado, dated January 16, 1967. ii. Legal Description of Structure (Attach USGS topographic map): On the south bank of the San Miguel River at a point whence the Northeast Corner of Section 15, Township 46 North, Range 15 West, N.M.P.M., bears North 13°17' East **4,402.2 feet, thence North 50°00' West 1,482 feet, more or less, in Montrose County, Colorado.** iii. Source: San Miguel River. iv. Appropriation Date: April 28, 1955; Priority No. 498, Water District No. 60. v. Decreed Amount: 55 cfs, ABSOLUTE. vi. Uses: Thermal power plant operation and cooling, domestic, sanitary and irrigation. c. Nucla Power Plant Spray Ponds: i. Date of Original Decree: The Nucla Power Plant Spray Ponds water rights were originally decreed in Civil Action No. 9042, Water District No. 60, District Court, Montrose County, State of Colorado, dated January 16, 1967. ii. Legal Description of Structure (Attach USGS topographic map): On the south bank of the San Miguel River at a point whence the Northeast Corner of Section 15, Township 46 North, Range 15 West, N.M.P.M., bears North 13°17' East **4,402.2 feet, thence North 50°00' West 1,482 feet more or less, in Montrose County, Colorado.** iii. Source: San Miguel River. iv. Appropriation Date: April 28, 1955; Priority No. 499, Water District No. 60. v. Decreed Amount: 15.4 acre-feet, ABSOLUTE. vi. Uses: Thermal power plant operation and cooling, domestic, sanitary and irrigation. d. Applicant intends to change and use the historic diversions associated with Nucla Station for the changed uses described below. Based on an analysis of diversion and historical consumptive use using a reasonable study period, maximum annual diversions were 1,984.0 acre-feet and average annual diversions were 1,541.7 acre-feet. On average, approximately 82 percent of historical diversions were consumed and the remainder was returned to the river as return flows. 3. Detailed Description of Proposed Change: a. Tri-State announced its transformative Responsible Energy Plan on July 17, 2019, and has been executing its transition to a cleaner generation portfolio while ensuring reliability. Consistent with the goals of the Responsible Energy Plan, Tri-State ceased operations at Nucla Station in September, 2019. Prior to the closure of Nucla Station, Tri-State used, *inter alia*, the BCD Ditch, Nucla Power Plant Ditch, and Nucla Spray Pond water rights that are outlined in Section 2 above (together "Subject Water Rights"), for operation and cooling of Nucla Station and related incidental uses. Tri-State seeks to change the Subject Water Rights to industrial and environmental use, including for blending with other industrial and mining water supplies prior to release back to the San Miguel River. The design of the facilities needed for said blending may require a component of storage, whether immediately or over time as necessary to meet Tri-State's environmental objectives; therefore, Tri-State also seeks the right to store the historical consumptive use (HCU) portion of the Subject Water Rights on-site. Said uses shall hereafter be the "Changed Uses". Tri-State seeks to divert the Subject Water Rights in historically diverted amounts (i.e., comprised of both historical consumptive use and the historical return flow components) for the Changed Uses at the presently decreed points of diversion, known as the Nucla Power Plant Ditch Headgate, as described in paragraph 2.a.iii.(2), above. After said use, the water will be measured before returning the historical return flow component, along with the historical

consumptive use component less any amounts that may be consumed in said Changed Uses, to the San Miguel River Tri-State will measure its diversions and releases in order to (1) account for and maintain the historical pattern of returns to the river; (2) compute any consumption of the HCU incurred in use for the Changed Uses; and (3) to maintain dominion and control over the HCU component of the Subject Water Rights being released to the river. b. Subject to all return flow obligations being met from the Subject Water Rights, Tri-State seeks a decree confirming that it may use, reuse, successively use, dispose of, or otherwise apply to extinction all the HCU component of the changed Subject Water Rights, including but not limited to, by sale, lease or other form of disposition to a subsidiary or third party. c. Tri-State anticipates that it will seek the right to use and successive use of the HCU component of the changed Subject Water Rights for augmentation purposes on the San Miguel River; provided, however, any use for augmentation will be the subject of separate legal authorization, whether by substitute water supply plan, a separate water court application and decree, or other lawful mechanism specifically approving the that use or successive use. d. Tri-State anticipates that the right to any other use, reuse, successive use, disposition, or application to extinction will be the subject of separate legal authorization, whether by substitute water supply plan, a separate water court application and decree, or other lawful mechanism specifically approving the that use or successive use. 4. Names(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modified to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant is the owner of the land on which any diversions or storage structures currently exist or are anticipated with the exception of the Highline Canal. The owners of the land on which the Highline Canal is located is as follows: (1) Bureau of Land Management, 2465 S. Townsend Avenue, Montrose, Colorado 81401 and (2) Bennett Family Trust, P.O. Box 52, Naturita, Colorado 81422. (9 pgs., 1 Exhibit) **MONTROSE COUNTY.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of October, 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