

Consent Agenda Item 1.e

March 15-16, 2022 Board Meeting

Case No. 21CW3075 (Water Division 4); Aegis Ranch Ventures, LLC,
a Delaware limited liability

Summary of Water Court Application

Combined Application for conditional water rights: groundwater, water storage, and plan for augmentation. A change of water right is also claimed within the application text.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2022 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 4 in the San Miguel River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
02CW0277	San Miguel River	confl Fall Creek	pt immed u/s of confl Horsefly Cr	93 (5/1 - 10/14) 61 (10/15 - 4/30)	01/23/2002
84CW0429	San Miguel River	confl S Fall Creek San Miguel River	conf Fall Creek	20 (1/1 - 12/31)	07/13/1984
84CW0435	Big Bear Creek	Headwaters	confl San Miguel River	2 (1/1 - 12/31)	07/13/1984

Potential for Injury

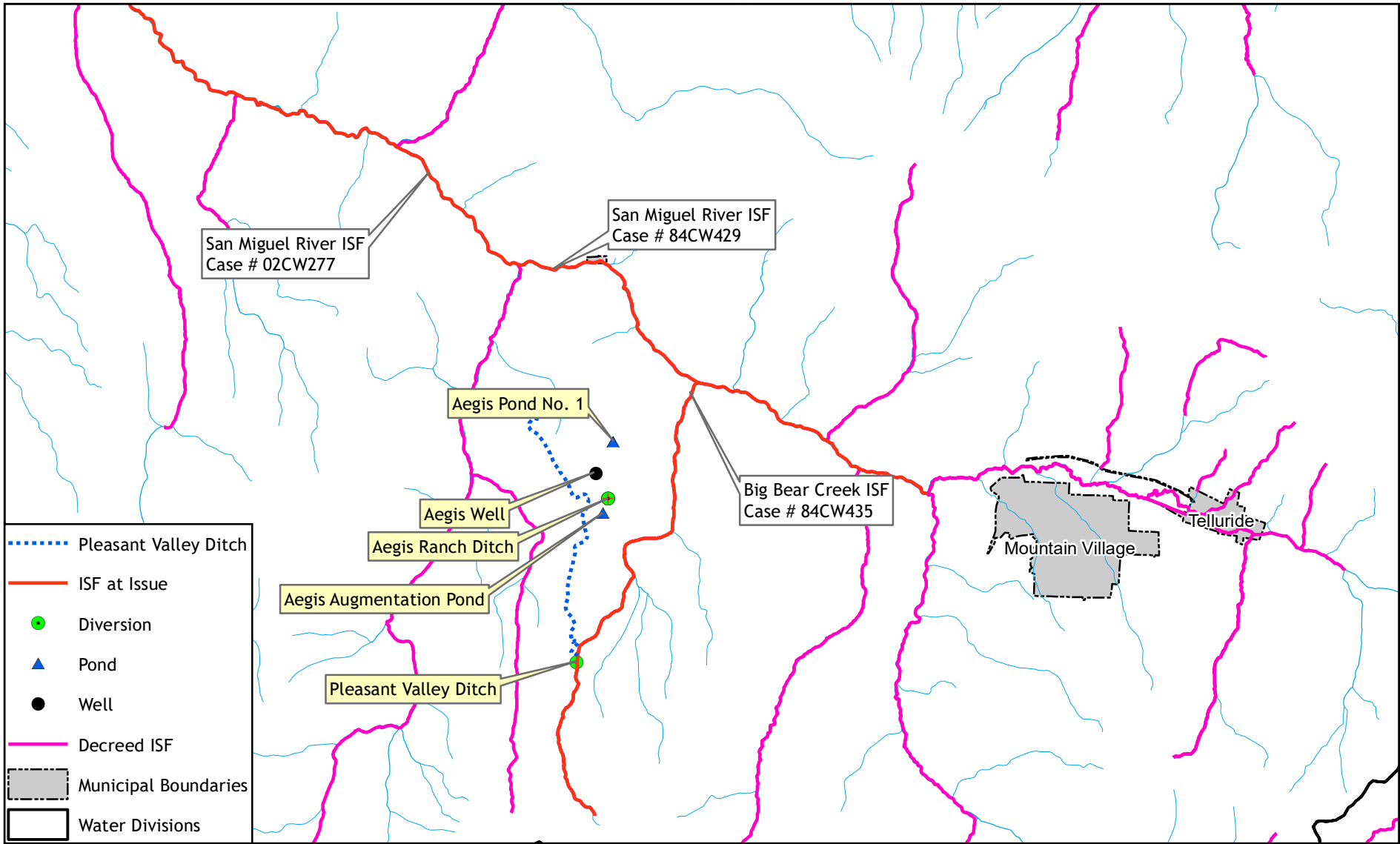
- The proposed change of water rights could cause an expansion of use and could alter the time, place, and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The proposed plan for augmentation may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the Applicant's claims will not injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by Pleasant Valley Ditch Association and Sound of Music, L.L.C.

Attorney Representing CWCB

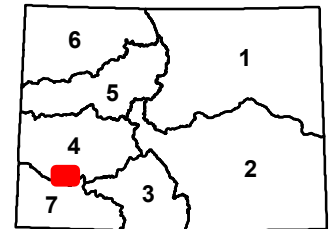
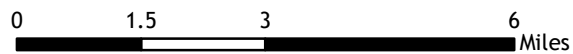
Marc Sarmiento, Assistant Attorney General, is assigned to this case and can be contacted at marc.sarmiento@coag.gov, or 702-508-6429.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting
 Consent Agenda Item 1.e Statement of Opposition
 Case No. 21CW3075 (Division 4)
 Aegis Ranch Ventures, LLC, a Delaware limited liability



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 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. 2021CW3075 SAN MIGUEL COUNTY. COMBINED APPLICATION FOR CONDITIONAL WATER RIGHTS: GROUNDWATER, WATER STORAGE AND PLAN FOR AUGMENTATION. Applicant: Aegis Ranch Ventures, LLC, 647 N. 7th St., Montrose CO 81401, c/o Martha P. Whitmore, Hockersmith & Whitmore, LLC, PO Box 646, 917 Main Street, Ouray, CO 81427-0646; 970-325-4414; Email: marti@ouraylaw.com Attorney for Applicant: Martha P. Whitmore, Hockersmith & Whitmore, LLC, PO Box 646, 917 Main Street, Ouray, CO 81427-0646; 970-325-4414; Email: marti@ouraylaw.com. **First Claim Underground Water Right – Non-Exempt Well. Name of well: Aegis Well; Well Permit No. 244448. Location of structure: NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 32, T43N, R10W, N.M.P.M. Easting: 763663, Northing: 4203870, UTM Zone 12N NAD 1983. Source of water: Groundwater tributary to Big Bear Creek, being tributary to the San Miguel River. Depth of well: 205 feet. Date of appropriation: August 31, 2007. How appropriation was initiated: A well permit was secured, and the well was drilled in August 2007. The well has been pump tested. Date water applied to beneficial use: N/A, Conditional. Amount claimed in cubic feet per second: 0.223 cfs (100 gpm), Conditional. Amount claimed in acre feet annually: 5.91 Acre Feet, CONDITIONAL. Proposed Uses: Storage in and filling Aegis Pond No. 1, fishing, recreation, piscatorial, fire-fighting, and incidental wildlife. Water will be used to fill a lined pond (Aegis Pond No. 1) and refill to replace evaporative loss from Aegis Ranch Pond No. 1 located on property depicted in Exhibit A attached to the Application and available for inspection at the Water Court, for storage, fishing, recreation, piscatorial and fire-fighting uses associated with a home. Water used for piscatorial purposes from Aegis Pond No. 1 will be circulated and recirculated to a connected water feature and allowed to flow by gravity back into Aegis Pond No. 1. Because this well is non-exempt, Applicant is also proposing a plan for augmentation to replace the out-of-priority depletions from this well. Details of the proposed plan for augmentation are provided in the Sixth Claim, below. The owner of the land on which the Aegis Ranch Well will be located is Grey Wind, LLC, whose address is: 5 Carsey Lane, Houston, TX 77024-6548. **Second Claim: Storage Water Right - Aegis Pond No. 1.** Name of Reservoir: Aegis Pond No. 1. Legal description of location of dam centerline. Attach legal description if necessary. NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 32, T43N, R10W, N.M.P.M. Easting: 764062, Northing: 4204705, UTM Zone 12N NAD 1983. Source: Water from the Aegis Well, tributary to Big Bear Creek tributary to the San Miguel River. Date of appropriation: March 31, 2021. How appropriation was initiated: On the ground site visit**

**Attachment
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and subsequent analysis and water supply work by SGM, Inc. demonstrating how the water for the pond would be filled from Aegis Well. Date water applied to beneficial use: CONDITIONAL. Amount claimed: 4.0 acre feet, Conditional, with a right to fill and successively refill at a rate of 0.223 cfs. Proposed Uses: Fishing, recreation, aesthetic, piscatorial, fire protection, and incidental wildlife and evaporation. The pond will be used for fishing, recreation, piscatorial, aesthetic, and fire protection with incidental evaporation and wildlife uses associated with the Aegis Ranch as shown in Exhibit A attached to the Application and available for inspection at the Water Court. Aegis Pond No. 1 will be lined to prevent seepage, and as part of the piscatorial use, water will be circulated and recirculated from Aegis Pond No. 1 to a connected water feature. Surface area of highwater line: 0.62 acres. Vertical height of dam: less than 10 feet. Length of dam in feet: 150 feet. Dam height and length are approximate and subject to change based on final design and construction requirements. Total capacity of reservoir in acre feet: 4.0 acre feet. Active capacity: 4.0 acre feet. Dead storage: 0.0 acre feet. The applicant is the owner of the land upon which the Aegis Ranch Well is located. **Third Claim: Storage Right - Aegis Augmentation Pond.** Name of Reservoir: Aegis Augmentation Pond. Legal description of location of dam centerline: NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 5, T42N, R10W, N.M.P.M. Easting: 763922, Northing: 4202843, UTM Zone 12N NAD 1983. See Exhibit A attached to the Application and available for inspection at the Water Court. Source: Surface water tributary to Big Bear Creek diverted through the Aegis Ranch Ditch as described below in the Fourth Claim and net stream depletions attributable to 0.1547 shares of water in the Pleasant Valley Ditch which has historically been used for irrigation of lands within the Aegis Ranch, a portion of which will be stored in the Aegis Augmentation Pond to release as needed for depletions from Aegis Well No. 1, pursuant to a plan for augmentation, as described in the Sixth Claim, below. If filled from a ditch: Aegis Augmentation Pond will be filled at a maximum rate of 0.50 cfs from the Aegis Ranch Ditch and in part with net stream depletions attributable to 0.1547 shares of the Pleasant Valley Ditch. Date of Appropriation: March 31, 2021. How appropriation was initiated: On the ground site visit and subsequent analysis and water supply work by SGM, Inc. demonstrating how the water for the pond would be filled from surface water diversions through the Aegis Ditch and with water attributable to the Pleasant Valley Ditch share. Date water applied to beneficial use: CONDITIONAL. Amount claimed: 3.5 acre feet, conditional, with a right to fill and successively refill at a rate of 0.50 cfs. Proposed Uses: Fishing, recreation, piscatorial, augmentation, fire protection. The pond will be used for augmentation, fishing, recreation, piscatorial, and fire protection purposes associated with the Aegis Ranch, and for augmentation by release of water stored in priority from the Aegis Ranch Ditch or net stream depletions attributable to Pleasant Valley Ditch share of 0.1547 to replace and augment depletions attributable to Aegis Well No. 1. Surface area of highwater line: 0.5 acres. Vertical height of dam: less than 10 feet. Length of dam in feet: 100 feet. Dam height and length are approximate and subject to change based on final design and construction requirements. Total capacity of reservoir in acre feet: 3.5 acre feet. Active capacity: 3.0 acre feet. Dead storage: 0.5 acre feet. The applicant is the owner of the land upon which the Aegis Ranch Well is located. **Fourth Claim: Surface Water Right - Aegis Ranch Ditch.** Name of structure: Aegis Ranch Ditch. Legal description of point of diversion: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 32, T43N, R10W, N.M.P.M. Easting: 764020, Northing: 4203246, UTM Zone 12N NAD 1983. See Exhibit A attached to the Application and available for inspection at the Water Court. Source of water: Surface water via an unnamed stream tributary to Big Bear Creek, tributary to the San Miguel River. Date of appropriation: March 31, 2021. How appropriation was initiated: On the ground site visit and subsequent analysis and water supply report by SGM, Inc. demonstrating how the water would be diverted and used from surface water diversions through the Aegis Ditch and stored in the Aegis Augmentation Pond. Date water put to beneficial use: CONDITIONAL. Amount claimed: 8.54 acre feet per year. Rate of flow: 0.50 cfs. List all uses of the water proposed: Storage in and filling and refill of the Aegis Augmentation Pond; incidental wildlife, and year-round freshening of Aegis

Augmentation Pond. **Fifth Claim: Change in Use for a portion of the 0.1547 share of Pleasant Valley Ditch.**

Applicant proposes to change the use of a portion of its 0.1547 share in the Pleasant Valley Ditch by adding, in addition to irrigation, storage of water for augmentation, recreation, fishing, piscatorial, wildlife habitat and watering, stock watering, fire protection, and direct augmentation. Water rights to be changed: 1. 0.1238 cfs of Priority No. 166, adjudicated by the District Court of Montrose County under CA 3785 for 12 cfs, with an adjudication date of February 26, 1927, and an appropriation date of July 2, 1916; and 2. 0.0825 cfs of Priority No. 187, adjudicated by the District Court of Montrose County under CA 3785 for 8.0 cfs, with an adjudication date of February 26, 1927, and an appropriation date of July 2, 1916. Point of diversion and historical use: Point of Diversion: The decreed point of diversion is described in Case No. 3785 as a point on the Main branch of Bear Creek, a tributary of the San Miguel River, at a point about two miles below the Silver Pick Mill. The unsurveyed location of the headgate diversion point is in the NE1/4SE1/4, Section 18, Township 42 North, Range 10, West N.M.P.M. at a point located approximately 74 degrees 45 minutes East a distance of 5200 feet from the southwest corner of said Section 18. It is also described as being located 50 feet from the east section line and 2030 feet from the south section line of said Section 18. Note that Section 18 is an irregular section. Source: Main branch of Bear Creek, tributary to the San Miguel River. Historical Use: These water rights historically have been used to irrigate the Sound of Music Ranch and have more specifically have irrigated 9.35 acres of the Aegis Ranch. See Exhibit A attached to the Application and which is available for inspection at the Water Court for a map of historically irrigated lands. Portions of both priorities have been previously changed to include augmentation as a use; 00CW0166, 03CW2076, 97CW011 and 17CW3008. None of these decrees changed the use of the Pleasant Valley Ditch share owned by the Applicant. Proposed Changes: Storage in the Aegis Augmentation Pond: Applicant proposes to store the net stream depletions associated with dry-up of approximately 2.0 acres of its PVD water rights in the Aegis Augmentation Pond by means of a pipeline off of the ditch. Direct Augmentation: Applicant proposes to leave its net stream depletions credits in Bear Creek to offset its delayed depletions from pumping of the Aegis Well. **VI. Sixth Claim: Plan for Augmentation 37-92-103(9)**

C.R.S. General: This plan for augmentation will augment out-of-priority diversion and the delayed depletions associated with the Aegis Well and the historical net return flow obligations associated with the dry-up of 2.0 acres of the PVD ditch. Dry-Up Acreage: Applicant will dry-up a maximum of 2 acres of historically irrigated acreage on the Aegis Ranch to provide historical consumptive use credits for this augmentation plan. The proposed location of the dry-up acreage is shown on Exhibit A attached to the Application and available for inspection at the Water Court. The exact location and quantity of the dry-up acreage is subject to change. Prior to entry of a decree, Applicant will provide a dry-up covenant that will designate the exact location and number of dry-up acres for this augmentation plan. Historical Use of Applicant's PVD Water Rights: The historical impacts of the Applicant's PVD water rights the stream, including stream depletions credits and historical net return flow obligations are shown on Table 2 of Exhibit B which is attached to the Application and available for inspection at the Water Court and are based on the decreed values in Case No. 17CW3008, which quantified the historical use of the PVD on the Sound of Music Ranch. Gross evaporative loss, yearly pond fill and the associated delayed impacts from pumping the Aegis Well are shown in Exhibit B attached to the Application and available for inspection at the Water Court, Tables 1 and 3. Operation of Augmentation Plan: Applicant will install an outlet structure and associated stage-storage-surface area table on the Aegis Augmentation Pond to enable releases from storage as directed by the water commissioner or Division

Engineer to replace out-of-priority depletions associated with pumping of the Aegis Well and historical net return flow obligations in the amounts set forth in Exhibit B attached to the Application and available for inspection at the Water Court pursuant to a valid senior call located downstream. In addition, Applicant claims the right to store historical stream depletion credits and release such credits to meet a valid senior call. **SAN MIGUEL COUNTY**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of February, 2022 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