

Consent Agenda Item 1.f

March 15-16, 2022 Board Meeting

Case No. 21CW3076 (Water Division 4); Elk Ridge Mining and Reclamation, LLC

Summary of Water Court Application

Application for new appropriation of underground 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 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 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	private road bridge	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

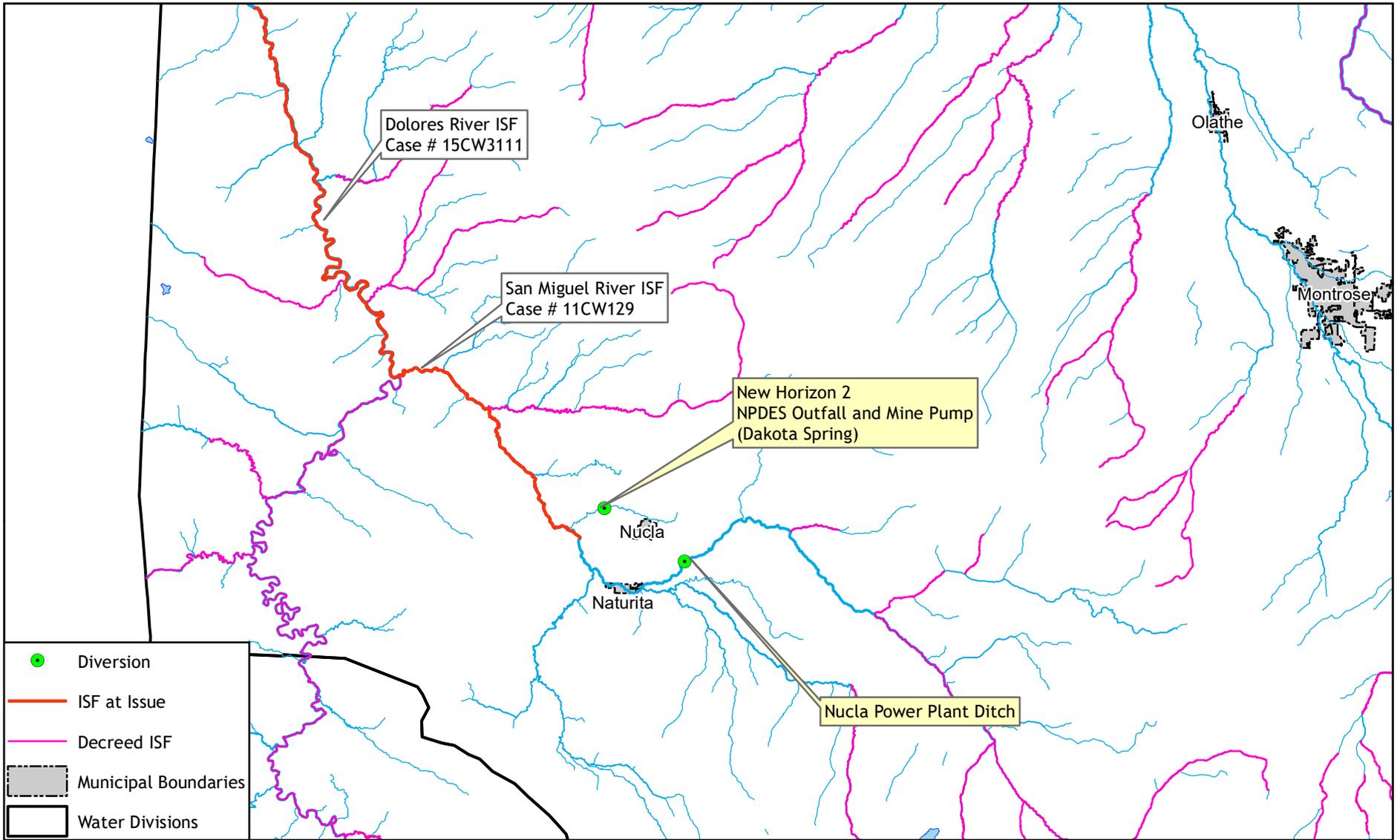
- Augmentation of the claimed groundwater right by the plan decreed in Case No. 10CW208 may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The extraterritorial use for the changed water rights cannot be evaluated because the type of use and the place of use is undefined. These uses could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in the decree to ensure that the proposed change will not injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by Colorado Parks and Wildlife and Parks and Wildlife Commission, and Southwestern Water Conservation District.

Attorney Representing CWCB

Bruce C. Walters, Assistant Attorney General, is assigned to this case and can be contacted at bruce.walters@coag.gov, or 720-508-6255.

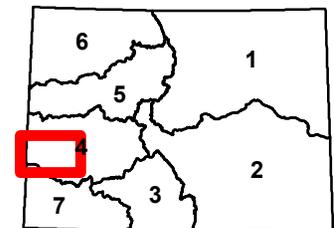


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting
 Consent Agenda Item 1.f Statement of Opposition
 Case No. 21CW3076 (Division 4)
 Elk Ridge Mining and Reclamation LLC

0 5 10 20
 Miles



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. 2021CW3076 ELK RIDGE MINING AND RECLAMATION, LLC (“Elk Ridge”), Attn: Kelly M. Beal, Generation Land and Water Resources Manager, Tri-State Generation and Transmission Association, Inc. (“Tri-State”), parent company of Elk Ridge, 1100 West 116th Ave., Westminster, Colorado 80234; Email: kbeal@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 NEW APPROPRIATION OF UNDERGROUND WATER RIGHT IN MONTROSE COUNTY.** 2. Overview of Application: Elk Ridge seeks a New Horizon 2 Mine Pump Enlargement water right for its existing New Horizon 2 Mine Pump structure. This new appropriation will enlarge Applicant’s existing New Horizon 2 Mine Pump water right, decreed by this Court in Case No. 09CW171 on August 6, 2013. In addition, out-of-priority depletions associated with the New Horizon 2 Mine Pump structure are augmented by Elk Ridge’s existing augmentation plan, decreed by this Court in Case No. 10CW208 on August 6, 2013. Presently, Elk Ridge must divert all the water collected in the New Horizon 2 Mine Pump structure to meet its discharge permit and reclamation requirements. Elk Ridge intends to pipe water diverted from the New Horizon 2 Mine Pump structure to the “Nucla Station Property” for blending with other water rights pursuant to the Application filed in Case No. 21CW3039, Water Court, Water Division 4, though other compliance mechanisms may become necessary. The Nucla Station Property is owned by Tri-State and is located in the E1/2 of the SW1/4 and the W1/2 of the SE1/4 of Section 15, Township 46 North, Range 15 West, N.M.P.M., in Montrose County, Colorado. 3. Name of Structure and Water Right: New Horizon 2 Mine Pump (structure), New Horizon 2 Mine Pump Enlargement water right. a. Legal Description of Point of Diversion: A “Well Field” to be located in the SW1/4 of Section 36, Township 47 North, Range 16 West, of the N.M.P.M., Montrose County, Colorado, located within both: (a) the New Horizon 2 Mine permit boundary; and (b) Montrose County Parcel No. 402536300033 (“Elk Ridge Property”). The Elk Ridge Property is described in **Exhibit A** to this application. The Well Field within the Elk Ridge Property is shown on the map attached as **Exhibit B** to this application. The present location of

the New Horizon 2 Mine Pump collection structure is shown on Exhibit B; however, the exact configuration of that structure may change within the Well Field as reclamation progresses. This Well Field represents a portion of the well field described in Case No. 09CW171 for the New Horizon 2 Mine Pump. b. Source: Groundwater, surface water, storm water runoff, seepage and wastewater tributary to Tuttle Draw, tributary to the San Miguel River. c. Depth: Not more than approximately 125 feet. The current depth of the New Horizon 2 Mine Pump Structure, an underground collection structure, presently varies from approximately 15 feet to 30 feet; however, depth may vary as reclamation of the property continues or as any modification of the structure is implemented to facilitate Elk Ridge's reclamation and compliance efforts. d. Date of Appropriation: December 30, 2021. e. How Appropriation was Initiated: By Elk Ridge forming the intent to appropriate this New Horizon 2 Mine Pump Enlargement by: analysis of expected yield of New Horizon 2 Mine pump structure in excess of the volumetric limit decreed to its existing New Horizon 2 Mine Pump water right; filing this application; site visits and investigations concerning diversions from the New Horizon 2 Mine Pump structure; planning for treatment means for the New Horizon 2 Mine Pump structure flows; and posting physical notice describing the appropriation at various locations around the Elk Ridge Property and at the entrance to Elk Ridge's main office, all occurring before or concurrently with the date of filing of this application. f. Date water right put to beneficial use: N/A. g. Amount: 2 cfs, up to 200 acre-feet, CONDITIONAL. This volume is in addition to the volume divertible under the original New Horizon 2 Mine Pump water right, decreed in Case No. 09CW171 (2.0 cfs, up to 600 acre-feet). The 2.0 cfs rate of diversion claimed under this New Horizon 2 Mine Pump Enlargement water right is not intended to be in addition to the 2.0 cfs divertible under the New Horizon 2 Mine Pump water right; rather, this Application seeks an additional annual volume of diversion from the New Horizon 2 Mine Pump structure, all at rates up to 2.0 cfs. h. Uses: (1) Industrial; (2) augmentation; and (3) diversions of water to storage for the previously described uses. Industrial use includes, without limitation, mining reclamation and permitting compliance. Augmentation use shall occur only after diversion, storage and release under the plan for augmentation decreed in Case No. 10CW208, or as otherwise approved by a subsequent decree of the Water Court. Applicant intends that these uses shall be fully consumable. Elk Ridge seeks a decree confirming that it may use, reuse, successively use, dispose of, or otherwise apply to extinction water diverted under the New Horizon 2 Mine Pump Enlargement water right, including without limitation, by sale, lease or other form of disposition to a subsidiary or third party. Elk Ridge anticipates that it will seek the right to reuse and successively use diversions pursuant to the New Horizon 2 Mine Pump Enlargement water right, including without limitation by sale, lease or other form of disposition to a subsidiary or third party, by separate legal authorization, whether by substitute water supply plan, a separate water court application and decree, or other lawful mechanism specifically approving said reuse or successive use. i. Permit No.: Well Permit No. 77191F. Applicant will seek a replacement well permit for the New Horizon 2 Mine Pump Structure consistent with the decree entered in this matter and the decrees entered in Case Nos. 09CW171 and 10CW208. j. Names and Addresses of Owners of Land on Which the New Horizon 2 Mine Pump Enlargement is Located: Elk Ridge. WHEREFORE, Elk Ridge requests entry of a decree approving this application, specifically: (1) granting the appropriation sought in this application; and (2) a determination that no material injury to the vested water rights of others will occur. Applicant also requests entry of an Order directing the State Engineer to issue a well permit, or any replacement well permit that may be required, for the New Horizon 2 Mine Pump structure consistent with the final decree entered in this case and the decrees for Case Nos. 09CW171 and 10CW208. (7 pgs., 2 Exhibits) **MONTROSE 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