

**Consent Agenda Item 1.g**

March 15-16, 2022 Board Meeting

Case No. 21CW3166 (Water Division 5); Peter M. McGrath and Janet E. Fox

**Summary of Water Court Application**

Application for Conditional Storage Water Rights, Approval of Plan for Augmentation, and Appropriate Right of Exchange.

**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 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-2941 (1976)	Capitol Creek	outlet Capitol Lake	confl Snowmass Creek	10 (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
W-2943B (1976)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	12 (4/1 - 10/15) 11 (10/16 - 3/31)	01/14/1976
92CW0281* (Div. 5)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	10.5 (4/1 - 10/15)	09/15/1992

\* Increase

**Potential for Injury**

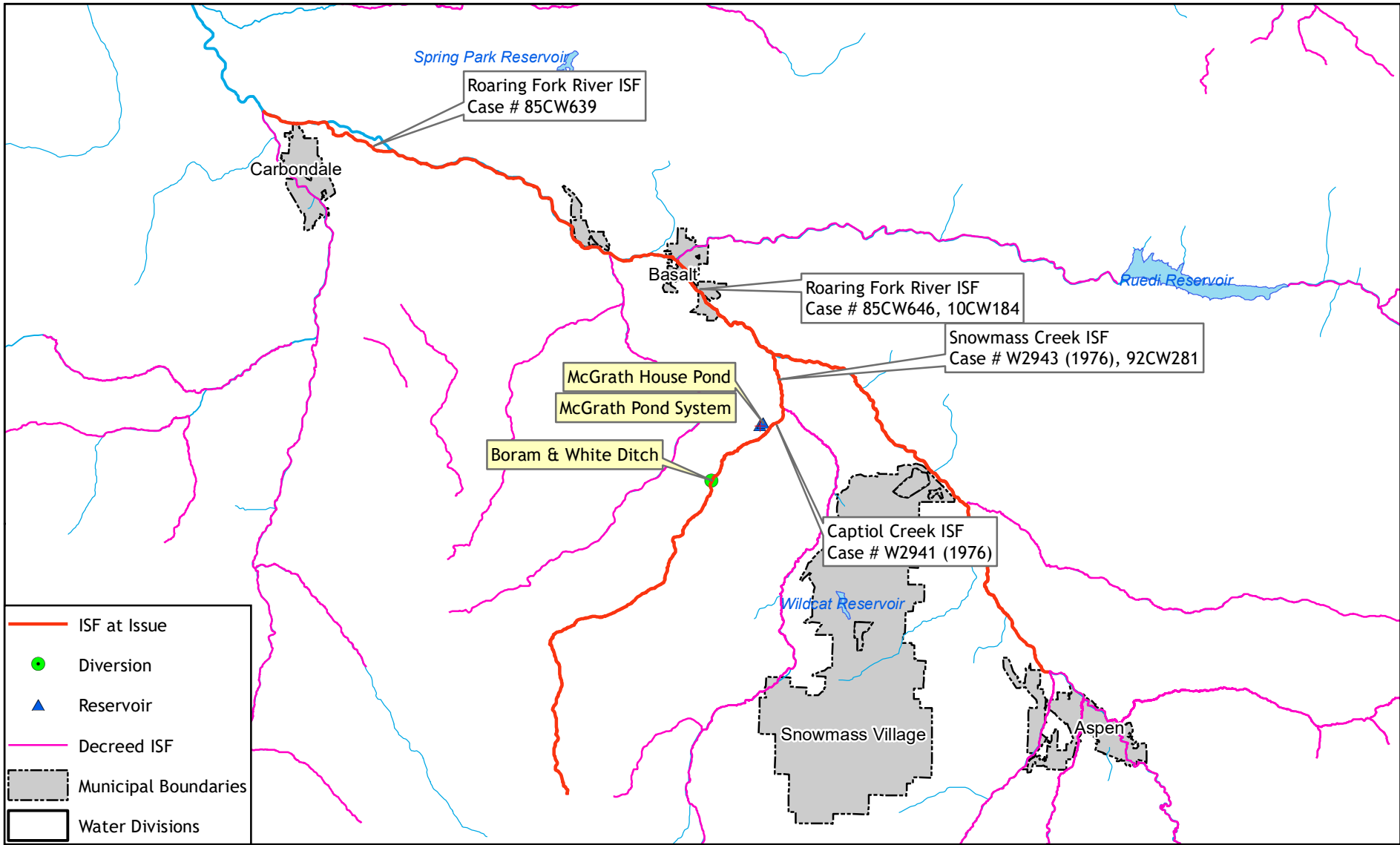
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The proposed flow through water right could injure the CWCB's instream flow water right because it is fully depletive to a segment of the intervening instream flow.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's instream flow water rights and the flows protected under Case No. 10CW184 (CWCB's Stapleton Brothers Ditch water rights).

**Other Objectors**

Statements of Opposition were also filed by Abundant Acres LLC.

**Attorney Representing CWCB**

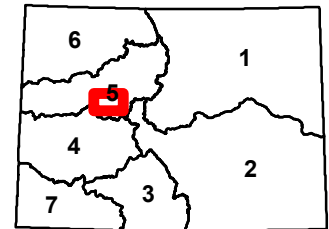
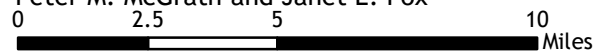
Bruce C. Walters, Assistant Attorney General, is assigned to this case and can be contacted at [bruce.walters@coag.gov](mailto:bruce.walters@coag.gov), or 720-508-6255.



**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting  
 Consent Agenda Item 1.g Statement of Opposition  
 Case No. 21CW3166 (Division 5)  
 Peter M. McGrath and Janet E. Fox



**DIVISION 5 WATER COURT-DECEMBER 2021 RESUME**

24. 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 DECEMBER 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.*

**21CW3166 PITKIN COUNTY, CAPITOL CREEK, SNOWMASS CREEK, ROARING FORK RIVER, COLORADO RIVER.**  
**Peter M. McGrath and Janet E. Fox, c/o Oates, Knezevich, Gardenswartz, Kelly & Morrow, P.C., 533 E. Hopkins Avenue, 3rd Floor, Aspen, CO 81611, (970) 920-1700.** APPLICATION FOR CONDITIONAL STORAGE WATER RIGHTS, APPROVAL OF PLAN FOR AUGMENTATION AND APPROPRIATIVE RIGHT OF EXCHANGE. **Information Common to Storage Claims:** Source: Capitol Creek, tributary to Snowmass Creek, Roaring Fork River and Colorado River via deliveries from the Boram and White Ditch structure. Legal Description: The decreed location of the headgate of the Boram and White Ditch is on the W. bank of Capitol Creek at a point about 3.5 miles above the mouth of Capitol Creek in Pitkin County. UTM Coordinates (NAD83 Z13: 326230m E; 4350204m N). Fill Rate: 1.112 c.f.s. Date of Appropriation: December 31, 2021. How appropriation was initiated: Formation of intent to appropriate water coupled with the filing of the Water Court application. Date water applied to beneficial use: N/A. **First Storage Claim.** McGrath Pond System. Legal description of location of dam: The McGrath Pond System is bounded by upper and lower termini. The upper terminus is located in the NE 1/4 of Sec. 4, Tsp 9 S., R. 86 W., 6th P.M. (UTM NAD83 Z13: 328239.3m E, 4352573.5m N) and the lower terminus outlet located in the NE 1/4 of Sec. 4, Tsp 9 S., R. 86 W., 6th P.M. (UTM NAD83 Z13: 328241.6m E, 4352494.4m N). Amount claimed: 0.45 a.f., conditional, with a right to fill and re-fill when water is physically and legally available. Surface area: 0.15 acres. Proposed use: Fire protection, piscatorial, recreation, aesthetic, augmentation, and delivery of water to McGrath House Pond for subsequent irrigation. **Second Storage Claim.** McGrath House Pond. Legal description of location of dam: The McGrath House Pond centroid is located at the NW 1/4 of Sect. 3, Tsp 9 S, R. 86 W., 6th P.M. (UTM NAD83 Z13: 328306.4m E, 4352586.5m N). Amount claimed: 0.70 acre-feet, cond., with a right to fill and re-fill when water is physically and legally available. Surface area: 0.24 acres. Proposed use: Irrigation of approximately 1.0 acre of lawn and garden irrigation around the proposed residence located in the NW 1/4 of Sect. 3 and N/E 1/4 of Sect. 4, Tsp 9 S., R. 86 W., 6th P.M., fire protection, piscatorial, recreation, aesthetic and augmentation. Remarks: In addition to filling and refilling the McGrath Pond System and McGrath House Pond (collectively the “Ponds”), the Ponds shall both be used as irrigation control structures for the Applicants’ interest in the Boram and White Ditch with no storage exceeding 72 hours to continue to irrigate historically irrigated lands on the Applicants’ property under the senior right. Applicants own an undivided 38/550ths interest, or an approximate 6.9% interest, in the Boram and White Ditch water rights, all as more fully described in the Application (1.112 cfs abs.). All evaporation from the Ponds and additional irrigation around the new residence will be augmented or administered pursuant to the plan for augmentation described below. This will not create an expansion of use since evaporative losses from the Ponds will be augmented or administered pursuant to the subject plan for augmentation. The new irrigated areas around the proposed residence can be considered an expansion of use. As such, this plan will provide augmentation for these depletions. The McGrath Pond System and McGrath House Pond are component parts of an integrated water supply project for Applicant’s property along with the Appropriative Right of Exchange. **Third Claim: Plan for Augmentation.** Structures to be augmented: McGrath Pond System and McGrath House Pond. Water rights to be used for augmentation: Basalt Water Conservancy District (“BWCD”) Water Allotment Contract utilizing the District’s water marketing supplies comprised of 2.7 acre feet of the following: Green Mountain Reservoir, Ruedi Reservoir, Troy Ditch and Edith Ditch water rights and/or the Robinson Ditch water rights, all as more fully described in the Application. Statement of plan for augmentation: Applicants intend to augment out-of-priority diversions from the Ponds by releases pursuant to a water allotment contract with the BWCD from either Ruedi Reservoir or Green Mountain Reservoir whenever there is a call on the Colorado River or the Roaring Fork River below its confluence with the Fryngpan River. Applicants anticipate out-of-priority depletions associated with both evaporation and irrigation. The maximum annual evaporation from a total of 0.39 acres of open water surface from the Ponds will be 0.563 acre-feet from the McGrath Pond System and 0.900 acre-feet from the McGrath House Pond. There are no delayed depletions associated with the Ponds. The evaporation is depletive to Capitol Creek. Applicants also plan to irrigate up to a maximum of 1.0 acre of lawn and landscape areas around a proposed new residence with its interest in the Boram and White Ditch. Using the Blaney-Criddle Method, the total annual evapotranspiration demand for irrigation of 1.0 acre is 1.924 feet per acre and the total annual irrigation diversion requirement will be 2.41 acre-feet based on an assumed irrigation efficiency of 80 percent. There will be approximately three months for delayed irrigation return flows to arrive at Capitol Creek based on a Glover analysis. Applicants are in the process of obtaining a BWCD contract for 2.7 acre-feet to cover evaporation and irrigation depletions

whenever a valid call occurs on the Roaring Fork River above its confluence with the Fryingpan River or on Snowmass Creek or Capitol Creek. Applicants anticipate their diversions will be subject to administrative calls from water rights on the Colorado River and/or the Roaring Fork River downstream of its confluence with the Fryingpan River for three weeks in April, one week in May, mid-June through October and one week of November of each year. Diversions during those periods will be replaced with releases pursuant to the BWCD contract from April through November. Should a call downstream of the confluence of the Roaring Fork River and the Frying Pan River, including a mainstem call on the Colorado River, occur outside those time periods, Applicants will curtail diversions. Local calls originating from water users located along the Roaring Fork River within the reach extending from its confluence with the Fryingpan River up to the confluence with Snowmass Creek, or from water users on Snowmass Creek or Capitol Creek are not expected. If a valid local call were to occur, the Ponds will be lowered commensurate with the evaporation rate and irrigation diversions from the Ponds associated with the newly irrigated areas will cease. In such event, Applicants may continue irrigating pursuant to an exempt well located on the property. Alternatively, the Applicants have the ability to by-pass diversions from storage in the Ponds. **Exchange:** Augmentation of the McGrath House Pond and McGrath Pond System using water rights available by contract with the Basalt Water Conservancy District will be accomplished by exercise of an appropriative right of exchange, for which Applicants seek a conditional right of exchange described as follows: Exchange Plan Reach: Downstream Termini: Green Mountain Reservoir exchange: The confluence of the Colorado River and the Roaring Fork River, more particularly described as a point in the SE 1/4 of the NW 1/4 of Sect. 9, Tsp 6 S., R. 89 W. of the 6th P.M. at a point approximately 2,200 feet from the N. Sect. line and 2,350 feet from the W. Sect. line (Garfield County; UTM NAD83 Zone 13: 299744.3m E; 4380368.3m N). Ruedi Reservoir and/or Troy and Edith Ditch Exchange: The confluence of the Roaring Fork River and the Fryingpan River located in the SW 1/4 of the SE 1/4 of Sect. 7, Tsp 8 S., R. 86 W., in the 6th P.M. at a point 647 feet from the S. Sect. line, and 1475 feet from the E. Sect. line (Eagle and Pitkin Counties; UTM NAD83 Zone 13: 324743.9m E; 4359431.9m N). Robinson Ditch Exchange: The point of diversion is located on the N. bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Sect. 11, Tsp 8 S., R. 87 W. of the 6th P.M. (Eagle County; UTM NAD83 Zone 13: 321622m E; 4359863m N). Upper terminus of exchange reach: The decreed location of the headgate of the Boram and White Ditch is on the W. bank of Capitol Creek at a point about 3.5 miles above the mouth of Capitol Creek in Pitkin County (UTM NAD83 Zone 13: 326230m E; 4350204 m N). Rate claimed: 0.04 cfs, conditional, with a maximum volume of 2.7 acre-feet. Date of initiation of appropriation: December 31, 2021. How appropriation was initiated: By formulation of intent to appropriate a water right coupled with the filing of the Water Court application. Date water applied to beneficial use by exchange: N/A. Applicants will install and maintain such measuring devices and implement such accounting procedures as may be required to verify that the amount of augmentation and exchange water equals or exceeds the amount of out-of-priority depletions resulting from the use of water under the claimed plan for augmentation and exchange. The Applicants own the land upon which the structures are located and where the water will be use. Maps and tables are on file with the Court as Figures 1 – 4 and Tables 1 – 7.

**YOU ARE HEREBY 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 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.**