

**Consent Agenda Item 1.c**

September 20-21, 2022 Board Meeting

Case No. 22CW3050 (Water Division 5); Two Creeks Holdings LLC

**Summary of Water Court Application**

Application for Storage Water Rights and Approval of Plan for Augmentation Including Exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in August 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
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*	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	10.5 (4/1 - 10/15)	09/15/1992
85CW0646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985
85CW0639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985

\* Increased

**Potential for Injury**

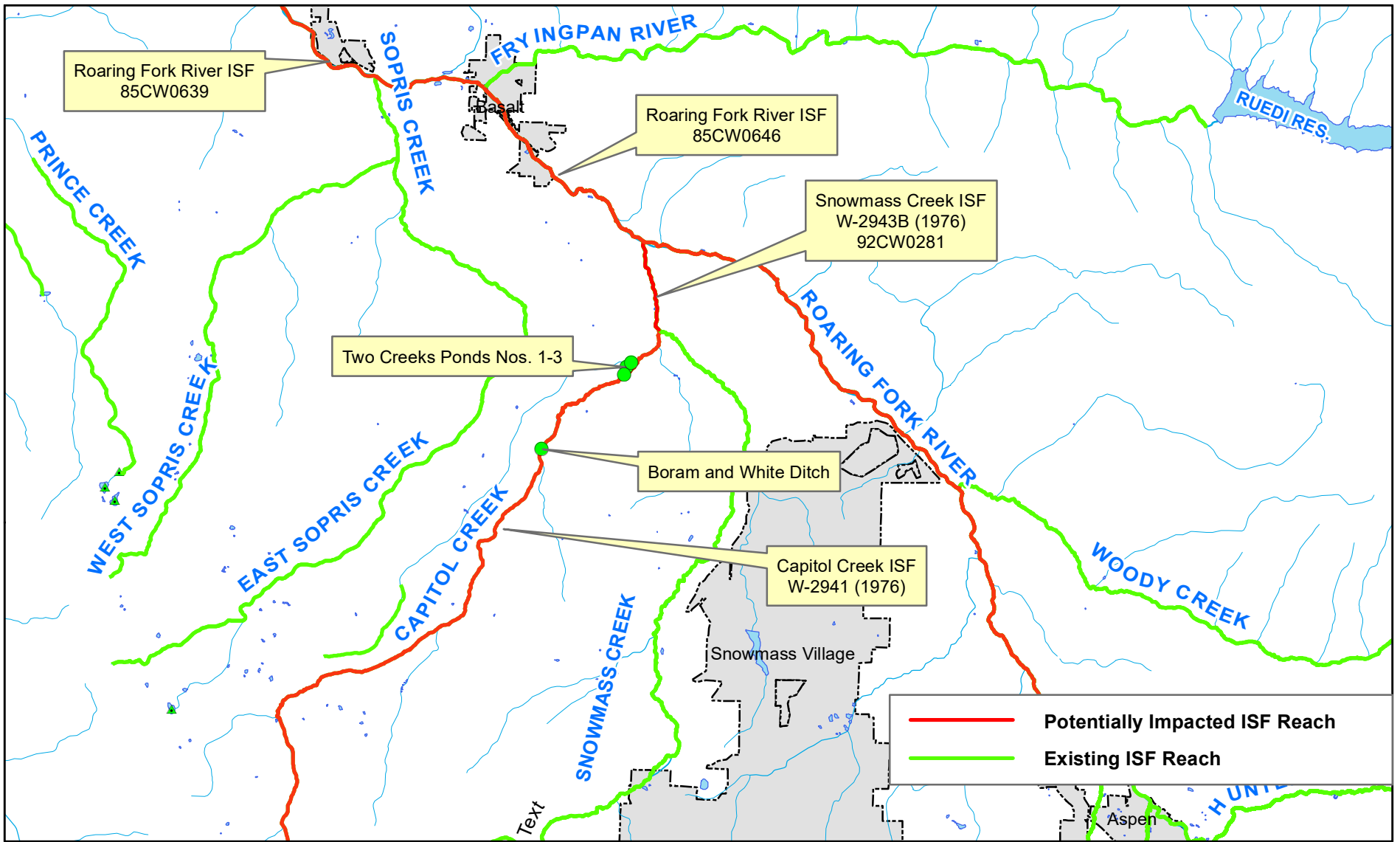
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's instream flow water rights and flows protected on the Roaring Fork River, as decreed in Case No. 10CW184 for CWCB's interest in the Stapleton Brothers' Ditch water right.

**Other Objectors**

Statements of Opposition were also filed by the City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise; Snowmass Capitol Creek Caucus; Boram and White Ditch Association; and, Board of County Commissioners of the County of Pitkin, Colorado.

**Attorney Representing CWCB**

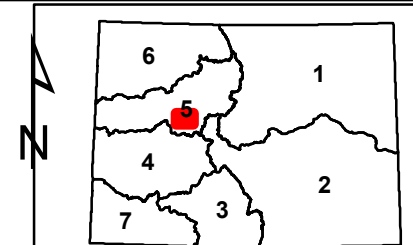
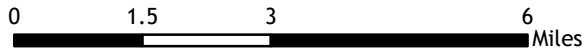
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at [jennifer.mele@coag.gov](mailto:jennifer.mele@coag.gov), or 720-508-6282.



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

Department of Natural Resources

September 20-21, 2022 CWCB Board Meeting  
 Consent Agenda Item 1c: Statement of Opposition  
 Case No. 22CW3050 (Water Division 5)  
 Two Creeks Holdings LLC



## DIVISION 5 WATER COURT- JUNE 2022 RESUME

4. 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 JUNE 2022. *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.*

**22CW3050 PITKIN COUNTY. COLORADO RIVER OR ITS TRIBUTARIES. Two Creeks Holdings LLC, c/o Paul L. Noto, Esq. and John M. Sittler, Esq. Patrick, Miller & Noto. P.C., 229 Midland Ave, Basalt, CO 81621, (970) 920-1030. First Claim: For Conditional Storage Water Right** Name of structure: Two Creeks Pond No. 1. Type: Reservoir. Description of conditional water right: Legal description: The outlet of Two Creeks Pond No. 1 is located in the NW ¼ NW ¼ of Section 3, Township 9 South, Range 86 West of the 6<sup>th</sup> P.M. (Pitkin County). UTM NAD83, Z13: Northing – 4352294, Easting – 328392.5. A map is on file with the Court as Figure 1. Source: Little Elk Creek and Boram and White Ditch, tributary to Capitol Creek, tributary to Snowmass Creek, tributary to the Roaring Fork River, tributary to the Colorado River. If filled from a ditch: Name of ditch used to fill and capacity in c.f.s.: Boram and White Ditch with an estimated capacity of 16 c.f.s. and Little Elk Creek with a capacity of approximately 1 c.f.s. Legal description of point of diversion: The decreed location of the headgate of the Boram and White Ditch is on the west bank of Capitol Creek at a point about 3 ½ miles above the mouth of Capitol Creek in Pitkin County; UTM coordinates: Easting 326230, Northing 4350204 (Zone 13). Date of appropriation: June 15, 2022. How appropriation was initiated: Field inspection, formulation of intent to apply water to beneficial use, and filing of this application. Date water applied to beneficial use: N/A. Amount: 4.10 acre-feet, conditional, with the right to fill and refill in priority or as augmented. Uses: Fire protection, piscatorial, aesthetic, and recreation. Applicant may also use the Two Creeks Pond No. 1 as an irrigation control structure for its existing rights in the Boram and White Ditch. Surface area of high water line: 0.82 acre. Vertical height of dam: less than 10 feet. Length of dam: Approximately 500 feet. Total capacity: 4.10 acre-feet. Active capacity: 0 acre-feet. Dead storage: 4.10 acre-feet. Remarks: The Two Creeks Pond No. 1 is a component of an integrated water supply project for Applicant's property along with the water rights applied for in this application. Applicant will line Two Creeks Pond No. 1 to prevent interception of groundwater. Applicant will use the Two Creeks Pond No. 1 as an irrigation control structure for its interest in the Boram and White Ditch water rights for irrigation of historically irrigated lands. Applicant owns the land on which the subject water right is located and where the water will be put to beneficial use. **Second Claim: For Conditional Storage Water Right** Name of structure: Two Creeks Pond No. 2. Type: Reservoir. Description of conditional water right: Legal description: The outlet of Two Creeks Pond No. 2 is located in the NW ¼ NW ¼ of Section 3, Township 9 South, Range 86 West of the 6<sup>th</sup> P.M. (Pitkin County). UTM NAD83, N13: Northing – 4352411, Easting – 328510. A map is on file with the Court as Figure 1. Source: Boram and White Ditch, tributary to Capitol Creek, tributary to Snowmass Creek, tributary to the Roaring Fork River, tributary to the Colorado River. If filled from a ditch: Name of ditch used to fill and capacity in c.f.s.: Boram and White Ditch with an estimated capacity of 16 c.f.s. Legal description of point of diversion: The decreed location of the headgate of the Boram and White Ditch is on the west bank of Capitol Creek at a point about 3 ½ miles above the mouth of Capitol Creek in Pitkin County; UTM coordinates: Easting 326230, Northing 4350204 (Zone 13). Date of appropriation: June 15, 2022. How appropriation was initiated: Field inspection, formulation of intent to apply water to beneficial use, and filing of this application. Date water applied to beneficial use: N/A. Amount: 3.60 acre-feet, conditional, with the right to fill and refill in priority or as augmented. Uses: Fire protection, piscatorial, aesthetic, and recreation. Applicant may also use the Two Creeks Pond No. 2 as an irrigation control structure for its existing rights in the Boram and White Ditch. Surface area of high water line: 0.71 acre. Vertical height of dam: less than 10 feet. Length of dam: Approximately 350 feet. Total capacity: 3.60 acre-feet. Active capacity: 0 acre-feet. Dead storage: 3.60 acre-feet. Remarks: The Two Creeks Pond No. 2 is a component of an integrated water supply project for Applicant's property along with the water rights applied for in this application. Applicant will line Two Creeks Pond No. 2 to prevent interception of groundwater. Applicant will use the Two Creeks Pond No. 2 as an irrigation control structure for its interest in the Boram and White Ditch water rights for irrigation of historically irrigated lands. Applicant owns the land on which the subject water right is located and where the water will be put to beneficial use. **Third Claim: For Conditional Storage Water Right** Name of structure: Two Creeks Pond No. 3. Type: Reservoir. Description of conditional water right: Legal description: The Two Creeks Pond No. 3 is located in the SW ¼ NW ¼ of Section 3, Township 9 South, Range 86 West of the 6<sup>th</sup> P.M. (Pitkin County). UTM NAD83, Z13: Northing – 4352098, Easting – 328338. A map is on file with the Court as Figure 1. Source: Boram and White Ditch, tributary to Capitol Creek, tributary to Snowmass Creek, tributary to the Roaring Fork River, tributary to the Colorado River. If filled from a ditch: Name of ditch used to fill and capacity in c.f.s.: Boram and White Ditch with an estimated capacity of 16 c.f.s. Legal description of point of diversion: The decreed location of the headgate of the Boram and White Ditch is on the west bank of Capitol Creek at a point about 3 ½

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miles above the mouth of Capitol Creek in Pitkin County; UTM coordinates: Easting 326230, Northing 4350204 (Zone 13). Date of appropriation: June 15, 2022. How appropriation was initiated: Field inspection, formulation of intent to apply water to beneficial use, and filing of this application. Date water applied to beneficial use: N/A. Amount: 3.60 acre-feet, conditional, with the right to fill and refill when in priority or as augmented. Uses: Fire protection, piscatorial, aesthetic, and recreation. Applicant may also use the Two Creeks Pond No. 3 as an irrigation control structure for its existing rights in the Boram and White Ditch. Surface area of high water line: 0.72 acre. Vertical height of dam: less than 10 feet. Length of dam: Approximately 520 feet. Total capacity: 3.60 acre-feet. Active capacity: 0 acre-feet. Dead storage: 3.60 acre-feet. Remarks: The Two Creeks Pond No. 3 is a component of an integrated water supply project for Applicant's property along with the water rights applied for in this application. Applicant will line Two Creeks Pond No. 3 to prevent interception of groundwater. Applicant will use the Two Creeks Pond No. 3 as an irrigation control structure for its interest in the Boram and White Ditch water rights for irrigation of historically irrigated lands. Applicant owns the land on which the subject water right is located and where the water will be put to beneficial use. **Fourth Claim: For Approval of Plan for Augmentation Name of structures to be augmented**: Two Creeks Pond No. 1, as described in the First Claim. Two Creeks Pond No. 2, as described in the Second Claim. Two Creeks Pond No. 3, as described in the Third Claim. Water rights to be used for augmentation: Basalt Water Conservancy District ("BWCD") Allotment Contract from the sources described in paragraph 15. Complete statement of plan for augmentation: Background: Applicant owns the 44.06-acre property shown on Figure 2, on file with the Court, and described as Pitkin County Parcel No. 264503202001. The Two Creeks Pond Nos. 1-3 will be located on Applicant's property. Applicant will fill the ponds under their respective junior priorities each spring with water diverted from Capitol Creek and delivered via the Boram and White Ditch laterals currently located on Applicant's property. Applicant owns an undivided 44/550ths interest in the Boram and White Ditch water rights, or approximately 8 percent (1.288 c.f.s.). Applicant will then continue to use these sources to refill, provide freshening flows to, and replace evaporative losses from each pond. Applicant may use the ponds as irrigation control structures for its interest in the Boram and White Ditch water rights. Whenever a valid and administered call occurs that would prevent application for diverting water into the Two Creeks Pond Nos. 1-3, Applicant will augment or administer the ponds under this plan for augmentation. Applicant also plans to improve drainage throughout its property including burying Boram and White Ditch laterals and sub-laterals. Due to the lengths of laterals to be buried, evaporative losses from the bypass channels and new inlet and outlet structure for Two Creeks Pond No. 3 do not need to be augmented. The Figure 2 map shows the laterals Applicant will bury and Figure 3 shows the ponds and stream course plan including the bypass channels, both on file with the Court. Water requirements: B. Water requirements: Evaporative depletions from the ponds will be 100 percent consumptive. Applicant's engineer calculated the gross evaporation rate as 3.75 feet using the SEO method outlined in the General Guidance for Substitute Water Supply Plans for Sand and Gravel Pits and SEO Policy 2004-3. The annual gross free water surface evaporation is 45.0 inches based on NOAA Technical Report NWS 33. Applicant's engineer did not consider effective precipitation because all ponds will be off channel. The total surface area of the ponds is 2.25 acres. Maximum annual evaporation is 3.075 acre-feet from Pond No. 1; 2.663 acre-feet from Pond No. 2; and 2.700 acre-feet from Pond No. 3, as shown on Tables 1-3. The total annual evaporation for all ponds is 8.438 acre-feet. Downstream call: If the calling water right is below the confluence of the Roaring Fork and Fryingpan Rivers, Applicant will augment the out-of-priority depletions by using water rights owned or controlled by the BWCD, as described above. Applicant is in the process of applying for an Allotment Contract for 8.3 acre-feet of water, annually. The contract will cover evaporative depletions from the ponds. The augmentation will be administered through the Two Creeks Exchange, applied for below. The attached Table 4 outlines an augmentation schedule for a downstream call, such as the Cameo Call. Applicant's engineer assumed a Colorado mainstem call for April through November. Should a mainstem call on the Colorado River occur outside these months, Applicant will curtail diversions into the ponds, although Applicant may still use the ponds as irrigation control structures for its Boram and White Ditch water rights. Local call: Calls originating on the Roaring Fork River from the confluence with the Fryingpan River to the confluence with Snowmass Creek are not expected. Similarly, water rights on Snowmass Creek and Capitol Creek below Applicant's property have not historically placed calls. Whenever a valid and administered downstream call occurs on Capitol Creek, Little Elk Creek, Snowmass Creek, or the Roaring Fork River above its confluence with the Fryingpan River, Applicant will curtail all filling of the Two Creeks Pond Nos. 1-3 by bypassing inflows into the ponds and allowing pond levels to drop commensurate with evaporation. However, the ponds may continue to be used as irrigation control structures for Applicant's Boram and White Ditch rights. **Fifth Claim: For Conditional Appropriative Right of Exchange Name of structure**: Two Creeks Exchange, Description of water right: Location of downstream termini: For exchange of Green Mountain Reservoir water: The confluence of the Roaring Fork and Colorado Rivers, located in the SE ¼ NW ¼ of Section 9, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point approximately 2,200 feet from the North section line and 2,350 feet from the West section line (Garfield County; UTM NAD 83 coordinates: Northing – 4380368, Easting – 299744, Zone 13). For exchange of Ruedi Reservoir and/or Troy and Edith Ditch water: The confluence of the Roaring Fork and Fryingpan Rivers, located in the SW ¼ SE ¼ of Section 7, Township 8 S., Range 86 W. of the 6<sup>th</sup> P.M., at a point 647 feet from the South section line and 1,475 feet from the East section line (Eagle and Pitkin Counties; UTM NAD 83 coordinates: Northing – 4359432, Easting – 324744, Zone 13). For exchange of Robinson Ditch water: The point of diversion is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, Township 8 South, Range 87 West, 6<sup>th</sup> P.M. (Eagle County; UTM NAD 83 coordinates: Northing – 4359863, Easting – 321622, Zone 13). Location of upstream terminus: The point of diversion for the Boram and White Ditch, as described in paragraph 3.C.i. A map is on file with the

Court as Figure 4. Source: The water rights owned or controlled by the BWCD and for which Applicant is in the process of applying for an Allotment Contract for the use of, as described in paragraph 15.A. Date of appropriation: June 15, 2022. How appropriation was initiated: Formulation of intent to apply water to beneficial use, application to the BWCD for an Allotment Contract, and filing of this Application. Date water applied to beneficial use: N/A. Amount: 0.07 c.f.s., conditional, up to 8.30 acre-feet per year.

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