

**Consent Agenda Item 1.d**

September 20-21, 2022 Board Meeting

Case No. 22CW3053 (Water Division 5); NamuRanch 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:

<b>Case Number</b>	<b>Stream</b>	<b>Upper Terminus</b>	<b>Lower Terminus</b>	<b>CFS Rate (Dates)</b>	<b>Approp. Date</b>
W-2946 (1976)	Conundrum Creek	Conundrum Springs	confl Castle Creek	9 (1/1 - 12/31)	01/14/1976
W-2947 (1976)	Castle Creek	headwaters	confl Roaring Fork River	12 (1/1 - 12/31)	01/14/1976
W-2948 (1976)	Roaring Fork River	confl Difficult Creek	confl Maroon Creek	32 (1/1 - 12/31)	01/14/1976
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

**Potential for Injury**

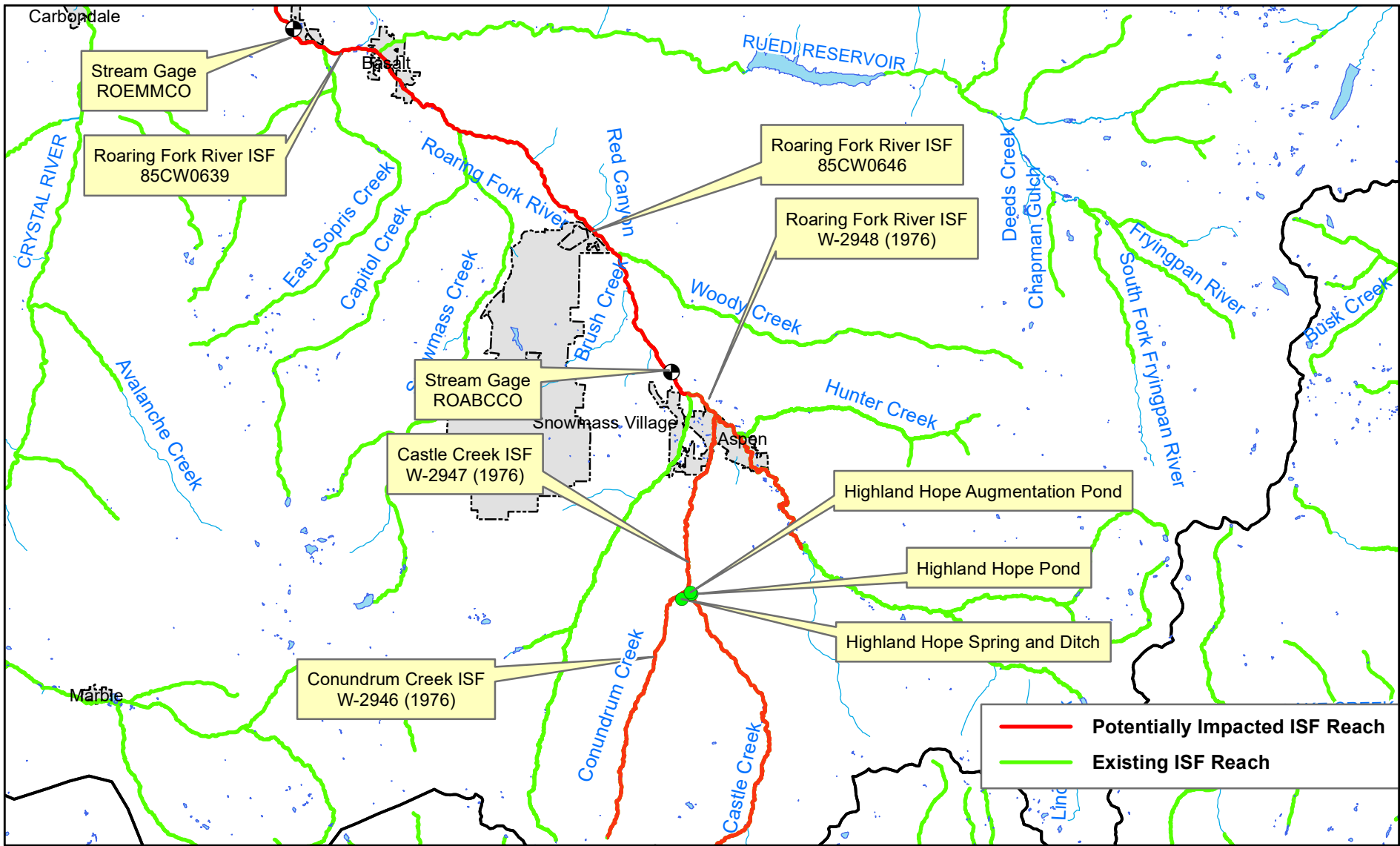
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure 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 Aspen; and, the City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise.

**Attorney Representing CWCB**

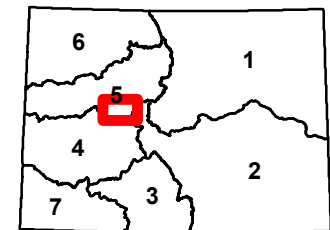
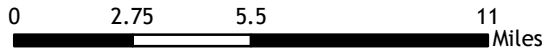
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at [jennifer.mele@coag.gov](mailto:jennifer.mele@coag.gov), or 720-508-6282.



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

Department of Natural Resources

September 20-21, 2022 CWCB Board Meeting  
 Consent Agenda Item 1d: Statement of Opposition  
 Case No. 22CW3053 (Water Division 5) NamuRanch LLC



## DIVISION 5 WATER COURT- JUNE 2022 RESUME

7. 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.*

**22CW3053 PITKIN COUNTY. COLORADO RIVER OR ITS TRIBUTARIES. NamuRanch 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 Absolute Storage Water Right** Name of structure: Highland Hope Pond. Type: Reservoir. Description of water right: Legal description: The outlet of the Highland Hope Pond is located in the NE ¼ SE ¼ of Section 2, Township 11 South, Range 85 West of the 6th P.M. (Pitkin County): UTM NAD83 Z13 coordinates: Northing – 4332132, Easting – 340544. A map is on file with the Court as Figure 1. Source: Highland Hope Spring and Ditch, tributary to Castle 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.: Highland Hope Spring and Ditch at 1.0 c.f.s. Legal description of point of diversion: The decreed point of diversion for the Highland Hope Spring and Ditch is whence A.P. No. 2 of H.E.S. 113 bears North 28°39' West 2124.40 feet. Date of appropriation: June 24, 1991. How appropriation was initiated: Field inspection, formulation of intent to apply water to beneficial use, construction of the pond, and application of the water to beneficial use. Date water applied to beneficial use: June 24, 1991. Amount: 0.85 acre-feet, absolute. Uses: Aesthetic, fire protection, piscatorial, recreation, wildlife watering, and as an irrigation control structure for Applicant's existing Highland Hope Spring and Ditch rights. If non-irrigation, describe purpose fully: The Highland Hope Pond provides in situ aesthetic, fire protection, piscatorial, recreation, and wildlife watering benefits to Applicant's property. The pond may also serve as an irrigation control structure for Applicant's existing rights in the Highland Hope Spring and Ditch, without outflows exceeding inflows every 72 hours. Surface area of high-water line: 0.191 acre. Vertical height of dam: Less than 10 feet. Length of dam: Approximately 230 feet. Total capacity of reservoir: 0.85 acre-feet. Active capacity: 0 acre-feet. Dead storage: 0.85 acre-feet. Applicant owns the land on which the water right is located and where the water is put to beneficial use. **Second Claim: For Conditional Storage Water Right** Name of structure: Highland Hope Augmentation Pond. Type: Reservoir. Description of water right: Legal description: The outlet of the Highland Hope Augmentation Pond is located in the NE ¼ SE ¼ of Section 2, Township 11 South, Range 85 West of the 6th P.M. (Pitkin County). UTM NAD83 Z13 coordinates: Northing – 4332221, Easting – 340468. A map is on file with the Court as Figure 2. Source: Highland Hope Spring and Ditch, tributary to Castle 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.: Highland Hope Spring and Ditch at 1.0 c.f.s. Legal description of point of diversion: The decreed point of diversion for the Highland Hope Spring and Ditch is whence A.P. No. 2 of H.E.S. 113 bears North 28°39' West 2124.40 feet. Date of appropriation: June 20, 2022. How appropriation was initiated: Formulation of intent to apply water to beneficial use, field inspection, engineering, and filing this Application. Date water applied to beneficial use: N/A. Amount: 0.60 acre-feet. Uses: Aesthetic, fire protection, piscatorial, recreation, wildlife watering, augmentation, and as an irrigation control structure for Applicant's existing Highland Hope Spring and Ditch rights. If non-irrigation, describe purpose fully: The Highland Hope Augmentation Pond provides in situ aesthetic, fire protection, piscatorial, recreation, and wildlife watering benefits to Applicant's property, as well as serving as an augmentation structure to augment the Highland Hope Pond under the plan for augmentation applied for below. Applicant may also use the pond as an irrigation control structure for Applicant's existing Highland Hope Spring and Ditch rights, with outflows exceeding inflows every 72 hours. Surface area of high-water line: 0.142 acre. Vertical height of dam: Less than 10 feet. Length of dam: Approximately 230 feet. Total capacity of reservoir: 0.60 acre-feet. Active capacity: 0.60 acre-feet. Dead storage: 0 acre-feet. Applicant owns the land on which the water right is located and where the water is put to beneficial use. **Third Claim: For Approval of Plan for Augmentation** Name of structures to be augmented: Highland Hope Pond. Highland Hope Augmentation Pond. Legal description of structures to be augmented: Highland Hope Pond, as described in paragraph 3.A. Highland Hope Augmentation Pond, as described in paragraph 6.A. Water rights to be used for augmentation: Basalt Water Conservancy District ("BWCD") Allotment Contract from the sources described in paragraph 10 and from the Highland Hope Augmentation Pond, as described above. Complete statement of plan for augmentation, covering all applicable matters under C.R.S. § 37-92-103(9), -302(1)(2), and -308(8): Background: Applicant purchased its property outside of Aspen, Colorado in August 2020. The property includes an existing pond, the Highland Hope Pond. Applicant fills the Highland Hope Pond through its existing Highland Hope Spring and Ditch structure. This application requests an absolute water right for the existing Highland Hope Pond, a conditional right for the planned Highland Hope Augmentation Pond, and approval of a plan for augmentation including exchange to augment evaporative depletions from both ponds. Applicant will use the ponds for aesthetic, fire protection, piscatorial, recreation, and wildlife watering uses. Additionally, the Highland Hope Augmentation Pond will act as an augmentation structure for Highland Hope Pond,

allowing pond levels to remain full throughout the year. Either or both ponds may act as irrigation control structures for Applicant's existing Highland Hope Spring and Ditch rights, with outflows exceeding inflows every 72 hours. Water requirements: A table describing the total water diversions and depletions for the Highland Hope Pond and Highland Hope Augmentation Pond is on file with the Court as Table 3. Monthly distribution and calculation of gross annual water feature evaporation is in accordance with SB 120 guidelines and does not take credit for effective precipitation under State Engineer's Office Policy 2004-3. The annual gross free water surface evaporation is 37.5 inches based on NOAA Technical Report NWS 33. Applicant's engineer calculated the maximum annual evaporation from the Highland Hope Pond as 0.564 acre-feet, as shown on Table 1, on file with the Court; and 0.419 acre-feet from the Highland Hope Augmentation Pond, as shown on Table 2, on file with the Court. Total evaporative depletion from the two ponds is 0.983 acre-feet, and evaporation is 100 percent consumptive. Applicant's engineer conservatively assumed an icecovered period from December 1 – February 28. Downstream call: If the calling water right is below the confluence of the Roaring Fork and Fryingpan Rivers, the out-of-priority depletions will be augmented using releases from the water rights owned by the Basalt Water Conservancy District, as described above. Applicant is in the process of applying for an Allotment Contract for 1.1 acre-feet of water, annually. The contract will cover evaporative depletions from the Highland Hope Pond and Highland Hope Augmentation Pond. The augmentation will be administered through the use of the Highland Hope Exchange, applied for below. Table 4, on file with the Court, outlines an augmentation schedule for a downstream call, such as the Cameo Call. The Table 4 augmentation schedule covers a call for April through November. Should a mainstem call on the Colorado River occur outside these months, all diversion into the Highland Hope Pond and Highland Hope Augmentation Pond will be curtailed. However, Applicant may elect to continue to use the ponds as irrigation control structures for its existing rights in the Highland Hope Spring and Ditch. Alternatively, Applicant may obtain additional contract supplies from BWCD to cover an extended downstream call. Local call: In the event of a local call on Castle Creek or the Roaring Fork River above the confluence with the Fryingpan River, Applicant will release water from Highland Hope Augmentation Pond back to Castle Creek. Applicant will continue to store water in the Highland Hope Pond so long as the evaporative depletions from that storage can be replaced through releases from the Highland Hope Augmentation Pond. Applicant's engineer conservatively assumed a local period from August 1 – September 30, resulting in a total of 0.143-acre-foot release potential from the Highland Hope Augmentation Pond. Table 5, on file with the Court, outlines a local call augmentation schedule. Applicant owns the land on which the augmented water rights are located and where the water is put to beneficial use. **Fourth Claim: For Appropriative Right of Exchange** Name of structure: Highland Hope Exchange. Type: Appropriative Exchange. Description of water right: Location of downstream termini: The points of replacement on the Roaring Fork and Colorado Rivers of the BWCD's water rights described as follows: 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 NAD83 Z13 coordinates: Northing 4380368, Easting 299744). For exchange of Ruedi Reservoir and 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 NAD83 Z13 coordinates: Northing 4359433, Easting 324744). For exchange of Robinson Ditch water: The point of diversion as decreed is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, T. 8 S., R. 87 West, 6<sup>th</sup> P.M. (Eagle County, UTM NAD83 Z13 coordinates: Northing 4359863, Easting 321622). Location of upstream terminus: The decreed point of diversion for the Highland Hope Spring and Ditch, as described in paragraph 3.C.ii. A map is on file with the Court as Figure 2. 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, all as described in paragraph 10.A. Date of appropriation: June 20, 2022. How appropriation was initiated: Field inspection, formulation of intent to apply water to beneficial use, application to the Basalt Water Conservancy District for Allotment Contract and filing of this application. Date water applied to beneficial use: N/A. Amount: 0.01 c.f.s., with a volumetric limit of 1.1 acre-feet per year. Use: Exchange to implement the plan for augmentation applied for above.

**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.**