

Consent Agenda Item 1.c

November 16-17, 2022 Board Meeting

Case No. 22CW3082 (Water Division 5); NamuRanch LLC

Summary of Water Court Application

Application for Groundwater Right, Surface Right, Storage Right, 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 September 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 watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
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

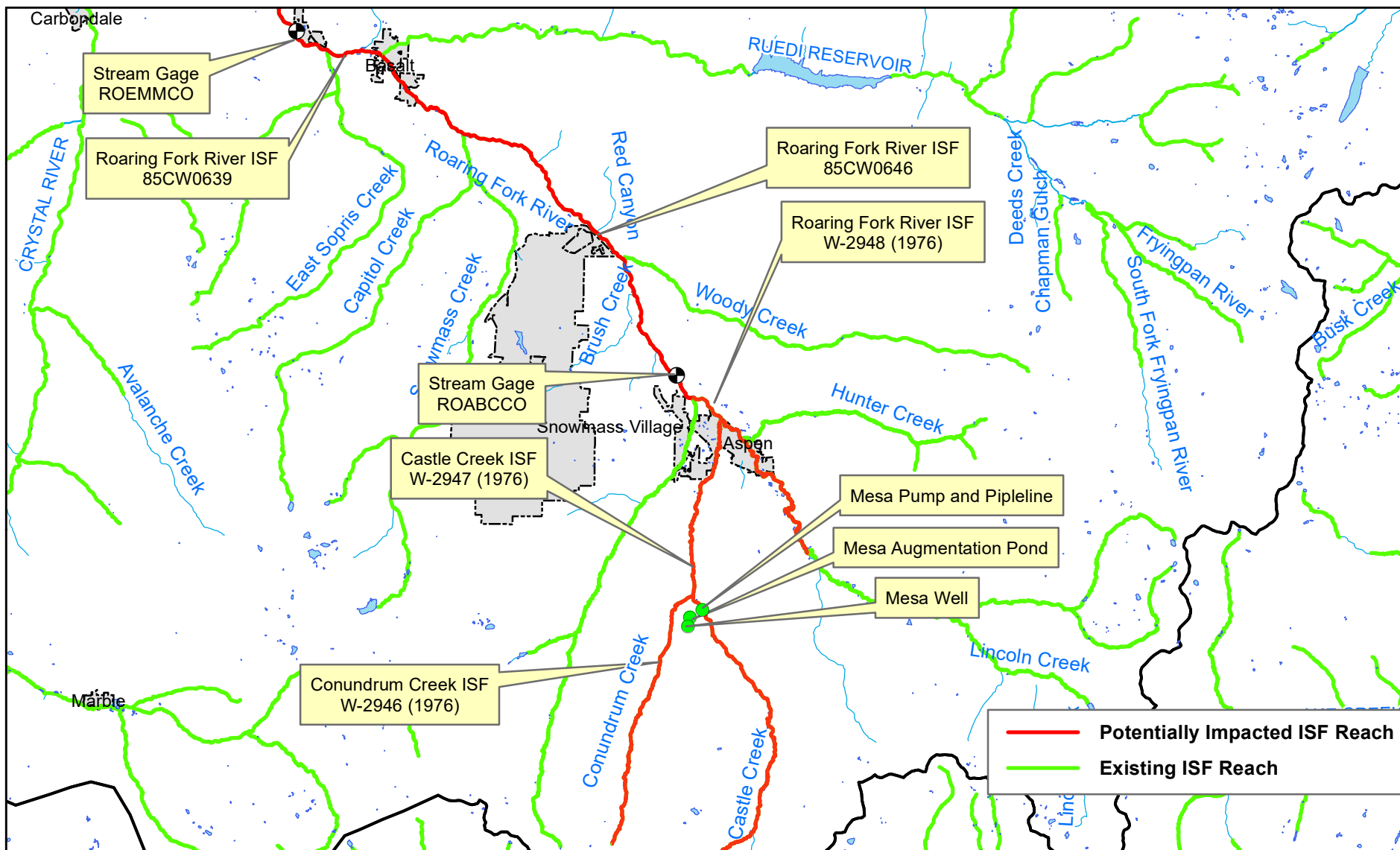
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The proposed flow through water right could injure the CWCB's instream flow water right because it is fully depletive to a segment 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 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 City of Aspen and, The City of Aurora, 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, or 720-508-6282.

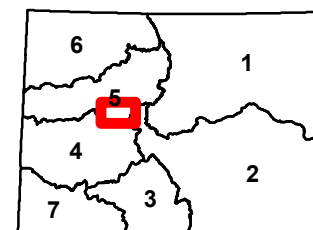


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

November 16-17, 2022 CWCB Board Meeting
 Consent Agenda Item 1c: Statement of Opposition
 Case No. 22CW3082 (Water Division 5)
 NamuRanch LLC

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DIVISION 5 WATER COURT- JULY 2022 RESUME

10. 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 JULY 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.*

22CW3082 PITKIN COUNTY, Castle Creek or its Tributaries. NamuRanch LLC c/o Paul L. Noto and Lisa A. Claxton, Patrick, Miller & Noto, P.C., 229 Midland Avenue, Basalt, CO 81621 (970) 920-1030. **First Claim: For Groundwater Right** Name of water right: Mesa Well. Legal Description: Located a point in the NW ¼ SE ¼ of Section 2, Township 11 South, Range 85 West of the 6th P.M. See the map attached to the Application as Figure 1. UTM coordinates: NAD83 Zone 13: 4332105.1 N, 340275.4 E. Source: Tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Depth of well: Approximately 120 feet. Appropriation date: July 28, 2022. How appropriation was initiated: Formation of intent to appropriate water and filing of this application. Date water applied to beneficial use: N/A. Amount claimed: 15 g.p.m., conditional. Uses: Domestic and fire protection. Statement of ownership: Applicant owns the land upon which the structure is located and where water will be put to beneficial use. Remarks: The Mesa Well is a component part of an integrated water supply plan for the property shown in Figure 1 attached to the Application. Applicant will operate the Mesa Well under the plan for augmentation claimed in the Fourth Claim below. **Second Claim: For Surface Water Right** Name of water right: Mesa Pump and Pipeline. Legal Description: Left bank of Castle Creek located in the NE ¼ SE ¼ of Section 2, Township 11 South, Range 85 West of the 6th P.M. See the map attached to the Application as Figure 1. UTM coordinates: NAD83 Zone 13: 4332218.6 N, 340371.9 E. Source: Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Date of Appropriation: July 28, 2022. How appropriation was initiated: Formation of intent to appropriate water and filing of this application. Date water applied to beneficial use: N/A. Amount claimed: 0.20 c.f.s. (90 g.p.m.), conditional. Uses: Irrigation of up to 1 acre and filling and refilling the Mesa Pond for piscatorial, aesthetic, recreational, wildlife, augmentation, and fire protection purposes. Number of acres historically irrigated: N/A. Number of acres proposed to be irrigated: 1 acre of lawn and landscape area. Legal description of irrigated acreage: 1 acre located within the Mesa Parcel of Applicant's property. See the map attached to the Application as Figure 1. Statement of ownership: Applicant owns the land upon which the structure is located and where water will be put to beneficial use. Remarks: The Mesa Pump and Pipeline is a component part of an integrated water supply plan for the property shown in Figure 1 attached to the Application. Applicant will operate the Mesa Pump and Pipeline under the plan for augmentation claimed in the Fourth Claim below. **Third Claim: For Storage Right** Name of water right: Mesa Augmentation Pond. Legal Description: The outlet is located in the NW ¼ SE ¼ of Section 2, Township 11 South, Range 85 West of the 6th P.M. See the map attached to the Application as Figure 1. UTM coordinates: NAD83 Zone 13: 4332174.2 N, 340281.5 E. Source: Mesa Pump and Pipeline, as described in the Second Claim above, tributary to Castle Creek, tributary to the Roaring Fork River, tributary to the Colorado River. Date of Appropriation: July 28, 2022. How appropriation was initiated: Formation of intent to appropriate water and filing of this application. Date water applied to beneficial use: N/A. Amount: 1.2 acre-feet, conditional, with the right to fill and refill in priority or when operating under the plan for augmentation. Uses: Irrigation of up to 1.0 acre of lawn and landscape area, augmentation, piscatorial, aesthetic, recreational, wildlife watering, and fire protection. Number of acres historically irrigated: N/A. Number of acres proposed to be irrigated: up to 1.0 acre of lawn and landscape area. The Applicant does not intend to use this water right to supplement irrigation on an area of land already irrigated under another water right. Legal description of irrigated acreage: Approximately 1.0 acre located within the Mesa Parcel of applicant's property. See the map attached to the Application as Figure 1. Surface area of high water line: 0.23 acre. Vertical height of dam: Less than 10 feet. Length of dam: Approximately 200 feet. Total capacity: 1.2 a.f. Statement of ownership: Applicant owns the land upon which the structure is located and where water will be put to beneficial use. Remarks: The Mesa Augmentation Pond is a component part of an integrated water supply plan for applicant's property. Applicant will divert water into the Mesa Augmentation Pond when water is legally and physically available in priority or under the plan claimed in the Fourth Claim below. **Fourth Claim: For Approval of Plan for Augmentation** Names of water rights to be augmented: Mesa Well, Mesa Pump and Pipeline, and Mesa Augmentation Pond. Source: Applicant is in the process of applying for a Water Allotment Contract in the amount of 2.6 a.f. from the Basalt Water Conservancy District ("BWCD"), under which the BWCD water rights described in paragraph 30 of the Application will be made available for augmentation of Applicant's water uses involved in this plan. Background: The Mesa Well will supply a single-family dwelling and accessory dwelling unit (ADU). The Mesa Pump and Pipeline will provide up to 1.0 acre of lawn and landscape irrigation by delivering water into the Mesa Pond, which will act as an irrigation forebay. The Mesa Pump & Pipeline will also fill and refill the pond for non-consumptive uses and freshening flows. Applicant will augment out-of-priority

depletions for the consumptive uses associated with in-house diversions, irrigation diversions, and pond evaporation depletions by exchange and replacement to downstream calling rights utilizing a Basalt Water Conservancy District Water Allotment Contract. When the exchange is out-of-priority, the in-house and irrigation depletions will be augmented by releases from the Mesa Augmentation Pond.

Water requirements: A table describing the water demands and depletions for the Mesa Pond, Mesa Pump and Pipeline, and Mesa Augmentation Pond is attached to the Application as Table 5. *In-house depletions:* The single-family home and ADU each require 350 gallons a day, for a total of 700 gallons a day or 0.784 a.f. per year, as shown on Table 5 attached to the Application. The consumptive use amount associated with the domestic uses is estimated at 10% of the diversion rate, being 0.078 a.f. per year, as the waste disposal from the home and ADU will be from a septic tank and leach field. *Irrigation depletions:* Applicant used the modified Blaney-Criddle methodology approved by the State Engineer to calculate the consumptive use rate for irrigation of 1.0 acre of bluegrass on Applicant's property. The consumptive use is 1.570 a.f. per acre. The irrigation depletions associated with this irrigation are 1.570 a.f., as shown on Table 2 and Table 4 attached to the Application. *Irrigation return flows:* Applicant conducted a Glover analysis to evaluate the lagging effect of the irrigation return flows. As shown in Table 3 attached to the Application, 90.2% of depletions will return to the stream system within the same month and 9.8% in the second month after diversion. Utilizing these return flow factors, Applicant calculated the monthly lagged return flows and net stream depletions, as shown on Table 4 attached to the Application. *Pond evaporation depletions:* Evaporation associated with 0.23 acre of pond surface area will also be augmented. The maximum annual evaporation of 0.679 a.f. is computed on a basis of a net evaporation rate of 2.95 acre-feet per acre per year. A description of the monthly delivery and evaporation demands for the pond is attached to the Application as Table 1. Monthly distribution and calculation of gross annual water feature evaporation is in accordance with the Office of the State Engineer's Policy 2004-3 and does not take credit for effective precipitation. Downstream call: The "Cameo Call" made by several downstream agricultural rights on the Colorado River near Grand Junction is the primary source of a potential downstream call on the claimed water rights. During a critical drought year, the Cameo Call is currently estimated to be active for one week in April, one week in May, two weeks in June, all of July through October, and one week in November. For ease of administration and to be conservative, applicant assumed a call period of April 1 – November 30. Under this plan for augmentation, applicant will obtain a BWCD Water Allotment Contract for 2.6 a.f. annually to augment by exchange the Cameo Call and any other valid administered call with a point of diversion below the confluence of the Roaring Fork and Frying Pan Rivers. Applicant will replace all out-of-priority consumptive uses associated with in-house diversions from the Mesa Well, irrigation depletions at the Mesa Pump and Pipeline, and evaporation depletions from the Mesa Augmentation Pond through releases from the BWCD water rights described above. Table 5 attached to the Application outlines an augmentation schedule for a downstream call, such as the Cameo Call, with releases under the BWCD Water Allotment Contract during a critical drought year. Applicant's Fifth Claim below describes an appropriate right of exchange for the reaches between the point of depletion on Castle Creek and the downstream points of replacement on the Roaring Fork and Colorado Rivers. The augmentation will be administered through the Mesa Exchange, applied for below. Local call: In the event of a valid local call on Castle Creek or the Roaring Fork River between the confluences with the Frying Pan River and Castle Creek, Applicant will augment depletions by making sufficient releases from the Mesa Augmentation Pond. Applicant will also administer for evaporative losses by lowering the Mesa Augmentation Pond commensurate with evaporation. If the local call is for a greater duration than the Mesa Augmentation Pond is capable of covering, the Applicant will cease irrigation so that the storage in the pond can fully augment the in-house depletions. Table 6 attached to the Application outlines an augmentation schedule for a local call with releases from the pond during a critical drought year. Statement of ownership: Applicant owns the land upon the augmented right is located and where water will be put to beneficial use. **Fifth Claim: For Appropriative Right of Exchange**

Name of water right: Mesa Exchange. Downstream termini: The points of replacement on the Roaring Fork and Colorado Rivers of the BWCD's water rights listed in paragraph 30 of the Application and described as follows: *For the 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 6th 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 the 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 South, Range 86 West of the 6th P.M., at a point approximately 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 4359432, Easting 324744); and *For the exchange of Robinson Ditch water:* The point of diversion 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 of the 6th P.M. (Eagle County, UTM NAD83 Z13 coordinates: Northing 4359863, Easting 321622). A map of BWCD's augmentation supplies is attached to the Application as Figure 2. Upstream termini: The points of depletion to the Castle Creek are described as follows: *For the Mesa Well:* the point of diversion is described in paragraph 3 of the Application. The point of depletion will be determined once the well is drilled. *For the Mesa Pump and Pipeline:* the point of diversion is described in the paragraph 12 of the Application. Sources: The sources are described in paragraph 30 of the Application. Date of appropriation: July 28, 2022. How appropriation was initiated: Formation of intent to appropriate water and filing of this application. Date water applied to beneficial use: N/A. Rate: 0.03 c.f.s., conditional. Volume: Up to 2.6 a.f. per year. Plan of operation: The plan for augmentation described in the Fourth Claim above includes an appropriate right of exchange of the augmentation water released under Applicant's BWCD Water Allotment Contract, extending from the lower termini to the upper termini

described in paragraph 35 of the Application. Applicant will operate the Mesa Exchange only when it is in priority. Remark: The Mesa Exchange is a component part of an integrated water supply plan for applicant's property shown on Figure 1 attached to the Application. **YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of SEPTEMBER 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.**