

Consent Agenda Item 1.c

January 23-24, 2023 Board Meeting

Case No. 22CW3037 (Water Division 7); LLH Operations LLLP

Summary of Water Court Application

Application for Simple Change of Diversion and for Absolute and Conditional, Surface, Underground and Storage Water Rights.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in November 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 right in Water Division 7 in the Animas River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-1764 (1977)	Florida River	confl Salt Creek	confl Animas River	20 (10/15 - 6/30) 12 (7/1 - 10/14)	01/19/1977

Potential for Injury

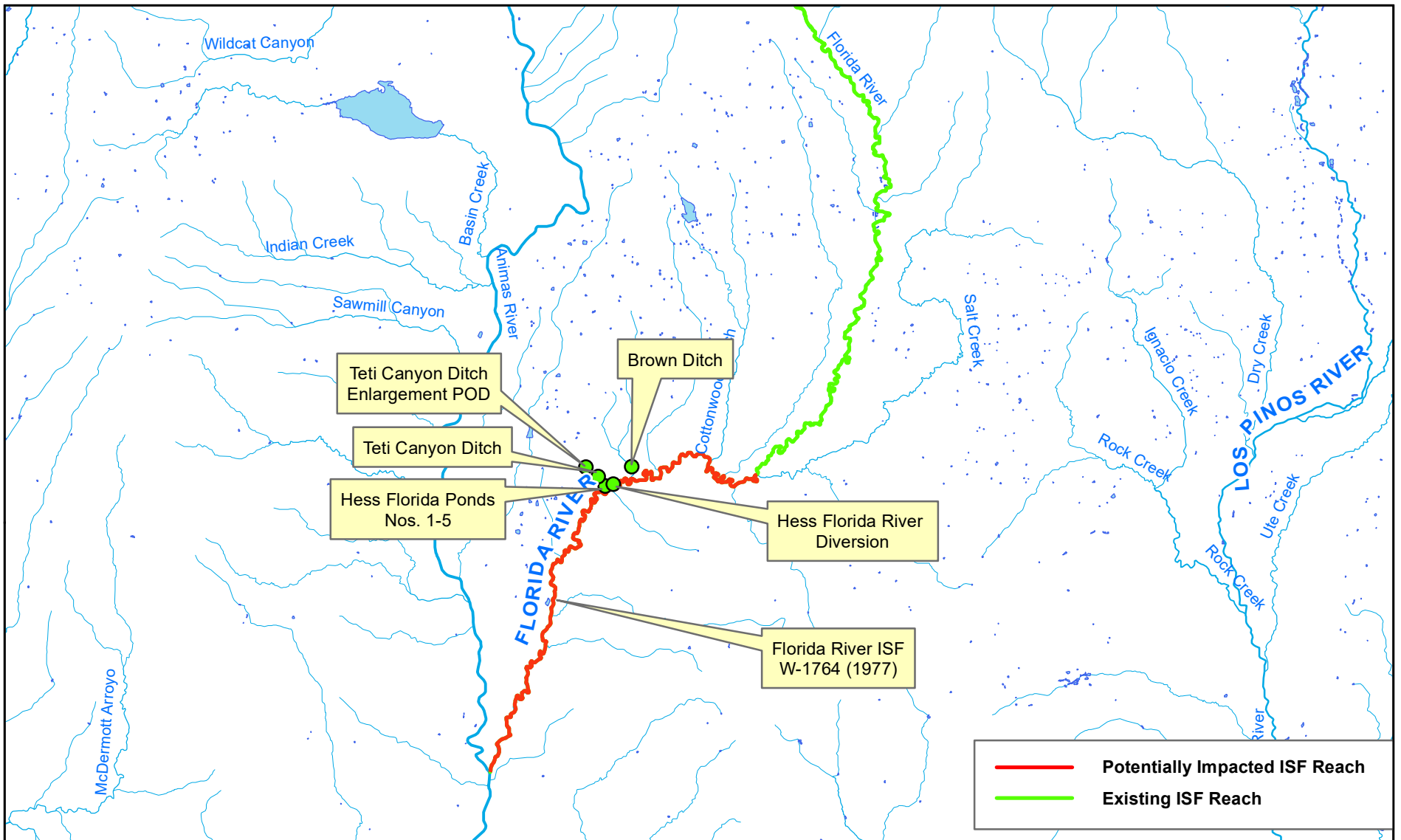
- The proposed change in point of diversion could cause an expansion of use which could injure the CWCB’s instream flow water right.
- The claimed beneficial uses of augmentation and aquifer recharge are unclear.
- Applicant’s claim for a simple change of water right for the Teti Canyon Ditch may be inappropriate because the application includes other claims involving this water right and the claimed simple change of water right which appears to be prohibited by section 37-92-305(3.5)(III)(C), C.R.S.

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

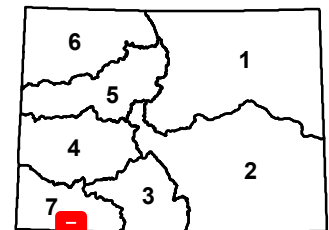
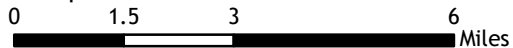
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

January 23-24, 2023 CWCB Board Meeting
 Consent Agenda Item 1.c
 Statement of Opposition
 Case No. 22CW3037 (Water Division 7)
 LLH Operations LLLP



DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of September 2022, for each county affected.

22CW3037 Application for Simple Change in Point of Diversion and for Absolute and Conditional Surface, Underground, and Storage Water Rights. **1. Applicant: LLH Operations LLLP**, PO Box 2546, Durango, CO 81301; c/o Southwest Water and Property Law LLC; 10 Town Plaza, No. 422; Durango, CO 81301; (970) 422-5510; jkane@swpropertylaw.com. **2. Simple Change.** Applicant requests the following simple change in point of diversion under C.R.S. § 37-92-305(3.5): A. Teti Canyon Ditch. i. Original decree: Feb. 20, 1965; CA 1751-B ii. Original location: North bank of Teti Canyon, whence South Quarter corner of Sec 5, T33N, R9W, NMPM, La Plata County, bears South 71°54' West, 3044.4 feet. iii. Source: Teti Canyon, tributary to Florida River. iv. Appropriation date: Aug. 1, 1952; priority 1968-51. v. Amount: 1.5 cfs, absolute. vi. Use: Irrigation of 58 acres. vii. Description of proposed simple change: NE1/4 SE1/4 Sec 5, T33N, R9W, NMPM; X: 247348 Y: 4113175 UTM Zone 13. This location is upstream of the originally decreed location and there are no intervening surface diversion points or inflows between the new and original points. **3. Surface.** Applicant requests the following conditional direct diversion water rights: A. Hess Florida River Diversion. i. Location: SE1/4 SW1/4 Sec 4, T33N, R9W, NMPM; X: 248176 Y: 4112658 UTM Zone 13. ii. Source: Florida River. iii. Appropriation date: March 12, 2020. iv. Amount: 5.82 cfs, conditional. v. Use: Irrigation and storage in and filling of Hess Florida Ponds for uses decreed for same. vi. Irrigated area: supplemental irrigation of 58 acres irrigated by Teti Canyon Ditch and 51 acres irrigated by Brown Ditch; irrigation of an additional 58 acres not irrigated by Teti Canyon Ditch or Brown Ditch; B. Teti Canyon Ditch Enlargement. i. Location: NE1/4 SE1/4 Sec 5, T33N, R9W, NMPM; X: 247348 Y: 4113175 UTM Zone 13. ii. Source: Teti Canyon, tributary to Florida River. iii. Appropriation date: March 12, 2020. iv. Amount: 4.32 cfs, conditional. v. Use: Irrigation, hydro-power generation, and storage in and filling of Hess Florida Ponds for uses decreed for same. vi. Irrigated area: supplemental irrigation of 58 acres irrigated by Teti Canyon Ditch and irrigation of and additional 109 acres. C. Brown Ditch Enlargement. i. Location: South bank of Phillips Draw, whence southwest corner of Sec 4, T33 North, R9 West, NMPM, bears South 57°24' West, 3910.88 feet. ii. Source: Phillips Draw, a tributary to Florida River. iii. Appropriation date: March 12, 2020. iv. Amount: 4.91 cfs, conditional. v. Use: Irrigation, hydro-power generation, and storage in and filling of Hess Florida Ponds for uses decreed for same. vi. Irrigated area: supplemental irrigation of 51 acres irrigated by Brown Ditch and irrigation of an additional 116 acres. vii. This request is for an enlargement of the uses of Brown Ditch, as originally decreed in Case No. CA 1751-B, Water Division 7, in 1968 with a 1952 appropriate date. D. Remark: Applicant's combined diversion rate for irrigation and supplemental irrigation use from Teti Canyon Ditch, Hess Florida Ditch, Teti Canyon Ditch Enlargement, Brown Ditch, and Brown Ditch Enlargement water rights will not exceed applicable duty of water. **4. Storage.** Applicant requests the following absolute and conditional surface

**Attachment
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water rights for storage: **A. Hess Florida Pond Nos. 1 to 5.** i. Location of pond centroids: a. Hess Florida Pond No. 1: SW1/4 SW1/4 Sec 4, T33N, R9W, NMPM, X: 247926 Y: 4112612 UTM Zone 13. b. Hess Florida Pond No. 2: NW1/4 NW1/4 Sec 9, T33N, R9W, NMPM, X: 247911 Y: 4112545 UTM Zone 13. c. Hess Florida Pond No. 3: NW1/4 NW1/4 Sec 9, T33N, R9W, NMPM, X: 247885 Y: 4112519 UTM Zone 13. d. Hess Florida Pond No. 4: NW1/4 NW1/4 Sec 9, T33N, R9W, NMPM, X: 247804 Y: 4112557 UTM Zone 13. e. Hess Florida Pond No. 5: NW1/4 NW1/4 Sec 9, T33N, R9W, NMPM X: 247800 Y: 4112504 UTM Zone 13. ii. Source: Florida River; Phillips Canyon, tributary to Florida River, and Teti Canyon tributary to Florida River. iii. Filling ditches and rates: a. Hess Florida River Diversion at 5.82 cfs; b. Teti Canyon Ditch Enlargement at 4.32 cfs; c. Brown Ditch Enlargement at 4.91 cfs (total combined filling rate from each ditch will not exceed 5.82 cfs). iv. Appropriation date: April 30, 2009. v. Amounts: a. Hess Florida Pond No. 1: 2.14 acre-feet with one refill, absolute. b. Hess Florida Pond No. 2: 1.34 acre-feet with two refills, absolute. c. Hess Florida Pond No. 3: 1.19 acre-feet with two refills, absolute. d. Hess Florida Pond No. 4: 1.27 acre-feet with two refills, absolute. e. Hess Florida Pond No. 5: 3.04 acre-feet with two refills, conditional. vi. Use: irrigation, recreation, piscatorial, firefighting, domestic, stock watering, augmentation, aquifer recharge, exchange, incidental wildlife, and incidental evaporation. (Hess Florida Pond Nos. 1-4 have been filled to capture, possess, and control the volume of water specified above for recreation, piscatorial, firefighting, and stock watering uses as contemplated by C.R.S. § 37-92-301(4)(e).) vii. Irrigated area: supplemental irrigation of 58 acres irrigated by Teti Canyon Ditch and 51 acres irrigated by Brown Ditch; irrigation of an additional 58 acres not irrigated by Teti Canyon Ditch or Brown Ditch. viii. Remark and alternative prayer for relief: Hess Florida Pond Nos. 1-4 are located off-channel from the Florida River, are not lined, and will not have an adjustable bottom-outlet structure. When Applicant constructed Hess Florida Pond Nos. 1-4 groundwater was not encountered and they have dried up after filling. Should it be determined that one or more of the above-described ponds do encounter groundwater, Applicant requests, in the alternative and as applicable, underground water rights for pond wells for the same amounts and uses described above and will apply for a well permit for any such pond well prior to entry of a decree. **5. Ownership:** A. Applicant is the owner of the land upon which all of the above structures are or will be constructed except for the Brown Ditch Enlargement, which crosses land owned by Jeffrey R. and Leslie A. Barnes, 306 Pipeline Canyon Road, Ignacio, CO, 81137. Application includes map of structure locations and irrigated area and table with pond specifications (9 pages including exhibits)

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS 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.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of November 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 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; Forms are available through the Office of the Water Clerk or on the Judicial web site at www.courts.state.co.us; Stephanie Dinnocenzo, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-247-2304)

Published: before October 31, 2022

/s/Stephanie Dinnocenzo
Water Court Specialist