

Consent Agenda Item 1.c

March 15-16, 2023 Board Meeting

Case No. 22CW3091 (Water Division 4); Quartz Creek Land Company

Summary of Water Court Application

Application for Water Rights.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2023 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 4 in the Tomichi Creek Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0086	Quartz Creek	confl Gold Creek	confl Tomichi Creek	5 (1/1 - 12/31)	03/17/1980

Potential for Injury

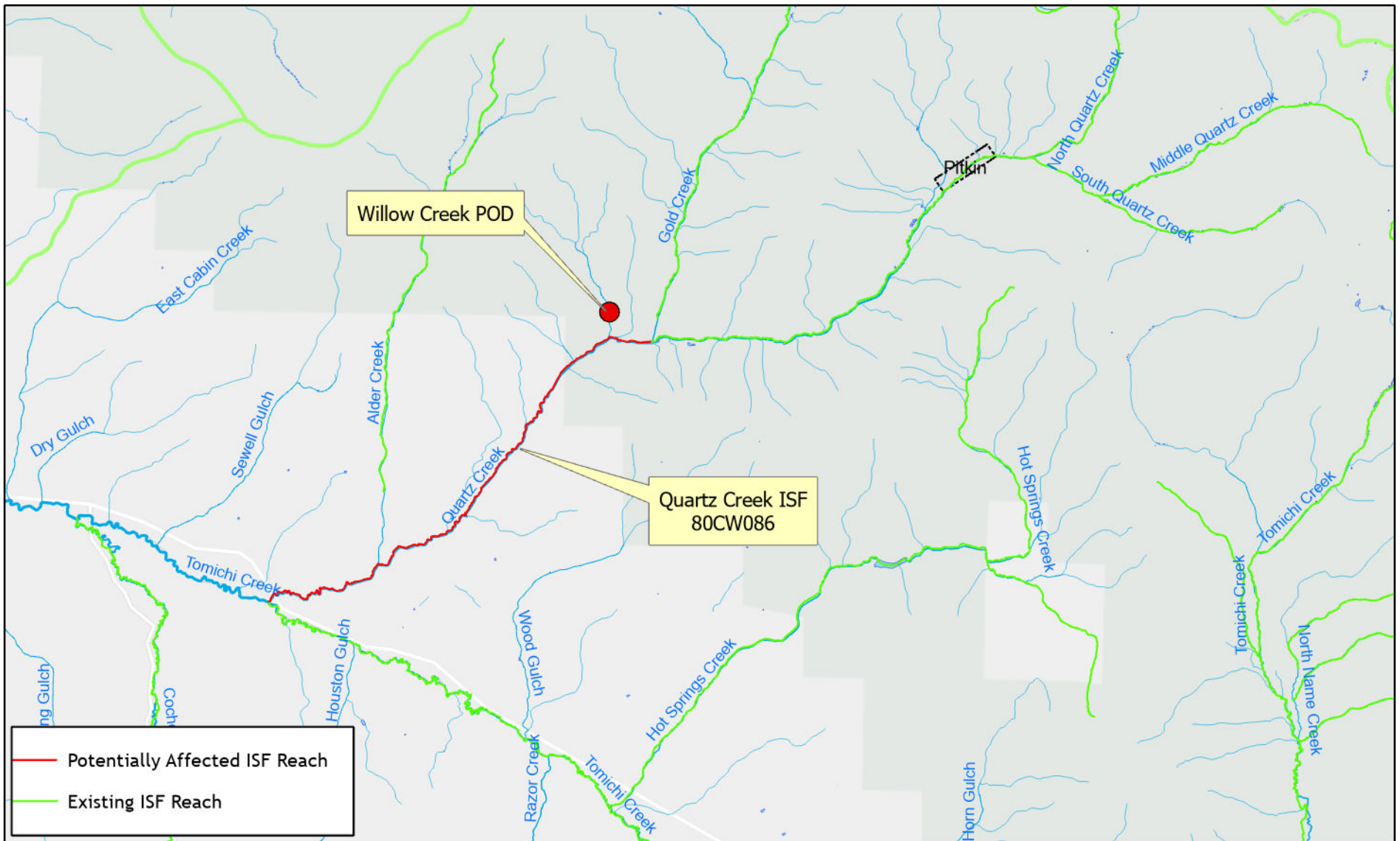
- The water right is claimed with an appropriation date senior to the instream flow water right appropriation. The existence and extent of this use must be confirmed for section 37-92-102(3)(b), C.R.S. to apply.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water right.
- Applicant's claim for piscatorial, wildlife, wildlife watering, and recreation uses after storage may be contrary to the ruling in *St. Jude's Co. v. Roaring Fork Club, L.L.C.*, 351 P.3d 442 (Colo. 2015).

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2023 CWC Board Meeting
 Consent Agenda Item 1.c: Statement of Opposition
 Case No. 22CW3091 (Water Division 4)
 Quartz Creek Land Company

0 1 2 4
 Miles



IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4
STATE OF COLORADO
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION
NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of December 2022.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows:

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.

**SUBSTITUTE WATER SUPPLY PLAN AND PRODUCED NONTRIBUTARY
GROUNDWATER NOTIFICATION LIST**

Section 37-92-308(6), C.R.S. directs the State Engineer to establish a notification list for each water division for the purpose of notifying interested parties of requests for the State Engineer's approval of substitute water supply plans ("SWSP") filed in that water division pursuant to section 37-92-308, C.R.S. The SWSP notification list is also used to provide notice of proposed water right loans to the Colorado Water Conservation Board for use as instream flows under section 37-83-105(2)(b)(II), C.R.S., notice of applications for the State Engineer's approval of interruptible water supply agreements under section 37-92-309(3)(a), C.R.S., notice of applications for fallowing-leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., notice of fire suppression ponds under section 37-80-124(10)(a)(II)(E), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

Pursuant to Rule 17.5(B)(2) of the Rules and Regulations for the Determination of the Nontributary Nature of Ground Water Produced Through Wells in Conjunction with the Mining of Minerals, at 2 CCR 402-17 ("Rules"), the State Engineer is publishing this invitation to persons to be included on the Produced Nontributary Ground Water Notification List. According to Rule 17.5(B)(2) of the Rules, the State Engineer must establish a Produced Nontributary Ground Water Notification List for each water division within the State of Colorado for the purposes of ensuring that water users within each water division receive adequate notice of proceedings held pursuant to the Rules. In order to establish such notification list, the State Engineer is directed, in January of each year, to cause to have published in the water court resume for each water division this invitation to be included on the Produced Nontributary Ground Water Notification List for the applicable water division.

This notice is an invitation to be included on the SWSP or Produced Nontributary Groundwater notification lists. Sign up for these or other notification lists maintained by the State Engineer at: <https://dwr.colorado.gov/public-information/notification-lists>. Additional information is available on the Division of Water Resources' website at: <https://dwr.colorado.gov/>.

CASE NO. 2022CW3091, Applicant, Quartz Creek Land Company, c/o David H. Tippit, PO Box 24024, Denver, CO 80224, (303) 324-1862. Please address all correspondence to: Peter D. Nichols, Esq., Megan Gutwein, Esq., Berg Hill Greenleaf Ruscitti LLP, 1712 Pearl Street, Boulder, Colorado 80302, (303) 402-1600. APPLICATION FOR WATER RIGHTS. FIRST

CLAIM: SURFACE WATER RIGHT 2. Name of structure: Willow Creek Point of Diversion. 3. Legal description of point of diversion: A point in the NE 1/4, NE 1/4 of section 27, Township 50N, Range 3E, N.M.P.M. 95 feet from the north section line and 1,320 feet from the east section line. Coordinates X: 358392 Y: 4270382 UTM Zone 13, NAD83. See map, Exhibit 1. 4. Source: Willow Creek, tributary to Quartz Creek, tributary to Tomichi Creek, tributary to Gunnison River. 5. Appropriation: A. Date of initial appropriation: i. April 1, 1975 for irrigation, supplemental irrigation, stockwatering, and wildlife watering purposes. ii. December 30, 2022 for storage in Quartz Creek Ranch Habitat Project Pond Nos. 1 and 2 decreed in Case No. 12CW156 and piscatorial, wildlife, wildlife watering, and recreation uses after storage as decreed in Case No. 12CW156. B. How appropriation was initiated: i. Controlling and using water from Willow Creek to irrigate 26 acres of land for April 1, 1975 appropriation date. ii. Filing of this Application for December 30, 2022 appropriation date. 6. Amount claimed: A. 2.6 cfs, absolute for irrigation, supplemental irrigation, stockwatering, and wildlife watering purposes. B. 2.6 cfs, conditional, for storage in Quartz Creek Ranch Habitat Project Pond Nos. 1 and 2 decreed in Case No. 12CW156 and piscatorial, wildlife, wildlife watering, and recreation uses after storage as decreed in Case No. 12CW156. 7. Uses or proposed uses: Irrigation, supplemental irrigation, stockwatering, wildlife watering; storage in Quartz Creek Ranch Habitat Project Pond Nos. 1 and 2 decreed in Case No. 12CW156 and piscatorial, wildlife, wildlife watering, and recreation uses after storage as decreed in Case No. 12CW156. 8. Total number of acres proposed to be irrigated: 26. 9. The landowner upon which this structure is located: Applicant. SECOND CLAIM: INTEGRATED SYSTEM 10. Integrated System: The Applicant filed this Application to adjudicate additional water rights as components of an integrated water supply system, which includes existing decreed water rights for irrigation, piscatorial, wildlife habitat, recreation, and aesthetic uses, to supply water for Quartz Creek Ranch. The system entails adjudicating the water rights claimed in this case, as well as other water rights on or tributary to Quartz Creek, tributary to the Gunnison River. Such water rights include those originally adjudicated in Case No. 12CW156 for the Quartz Creek Ranch Habitat Enhancement Project and those pending in Case No. 20CW3099 for additional ponds. These structures and water rights constitute an integrated water supply system as defined by Denver v. Northern Colo. Water Conservancy Dist., 276 P.2d 992 (Colo. 1955), because each structure and water right in the system has a direct bearing on the functioning of the entire system. Therefore, work accomplished on one portion of this integrated system may be considered evidence of reasonable diligence on the part of Applicant as to the other portions of the system. C.R.S. § 37-92-301(4)(b). WHEREFORE, the Applicant prays this Court enter a decree: a) Granting the subject water right as applied for herein; and b) Granting such other and further relief as the Court deems proper. (6 pages, including 1 exhibit) **GUNNISON COUNTY.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of February 2023 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 a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at www.courts.state.co.us). (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us). FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401