

Memorandum



To: City Council
From: Ken Coleman
Date: June 19, 2015
Re: Water Rights

Our water attorney has advised us of two water rights applications on the Tomichi Creek drainage where statements of opposition are recommended.

First, in Case No. 15CW16, Cross Bar Ranch filed an application for determination and/or change of a number of different water rights on Tomichi Creek. As the water will be used primarily for irrigation, some of that amount should accrue back to Tomichi Creek as return flow; however, the application does not address that point. Because a 5.3 cfs reduction in the flow on Tomichi Creek is enough to be of concern and the application is confusing in its description of what the applicant is and is not seeking, it is recommended that the City consider filing a statement of opposition in this case.

Second, in Case No. 15CW17, Cross Bar Ranch is invoking a relatively recent statute that allows for applications to correct established but erroneously described points of diversion. The idea behind the statute is to allow for a somewhat simplified water court proceeding in cases in which water has been diverted at the same physical location since the decree for a water right was entered, but that location is not the same as the point of diversion specified in the decree. In this case, Cross Bar Ranch is asking the court to correct erroneously described points of diversion for twenty different ditches, as follows:

All told, the water rights for which the applicant is seeking corrected points of diversion on Tomichi Creek in this case add up to more than 106 cfs. Again, as these are irrigation water rights, some of that amount should accrue back to Tomichi Creek as return flow, but the application does not address that point. Because 106 cfs is an extremely large amount of flow to be taken out of Tomichi Creek, because these water rights carry senior priorities, and because applications under the recent statute allowing for correction of erroneously decreed points of diversion are still something of a new animal, it is recommended that the City file a statement of opposition in this case as well.

Staff recommends Council approve filing statements of opposition in cases 15CW16 and 15CW17 and authorize the City Manager to sign both documents.