

Consent Agenda Item 1.a

March 20-21, 2019 Board Meeting

Case No. 18CW3193 (Water Division 1); City of Loveland

Summary of Water Court Application

Applicant seeks to quantify and use return flows.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in January 2019 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

Instream flow water rights that may be injured cannot be specifically identified because the proposed place of use is to undefined extraterritorial locations noted as "uses outside of Loveland's service area by lease, trade, exchange, sale or other such arrangement entered into by Loveland."

Potential for Injury

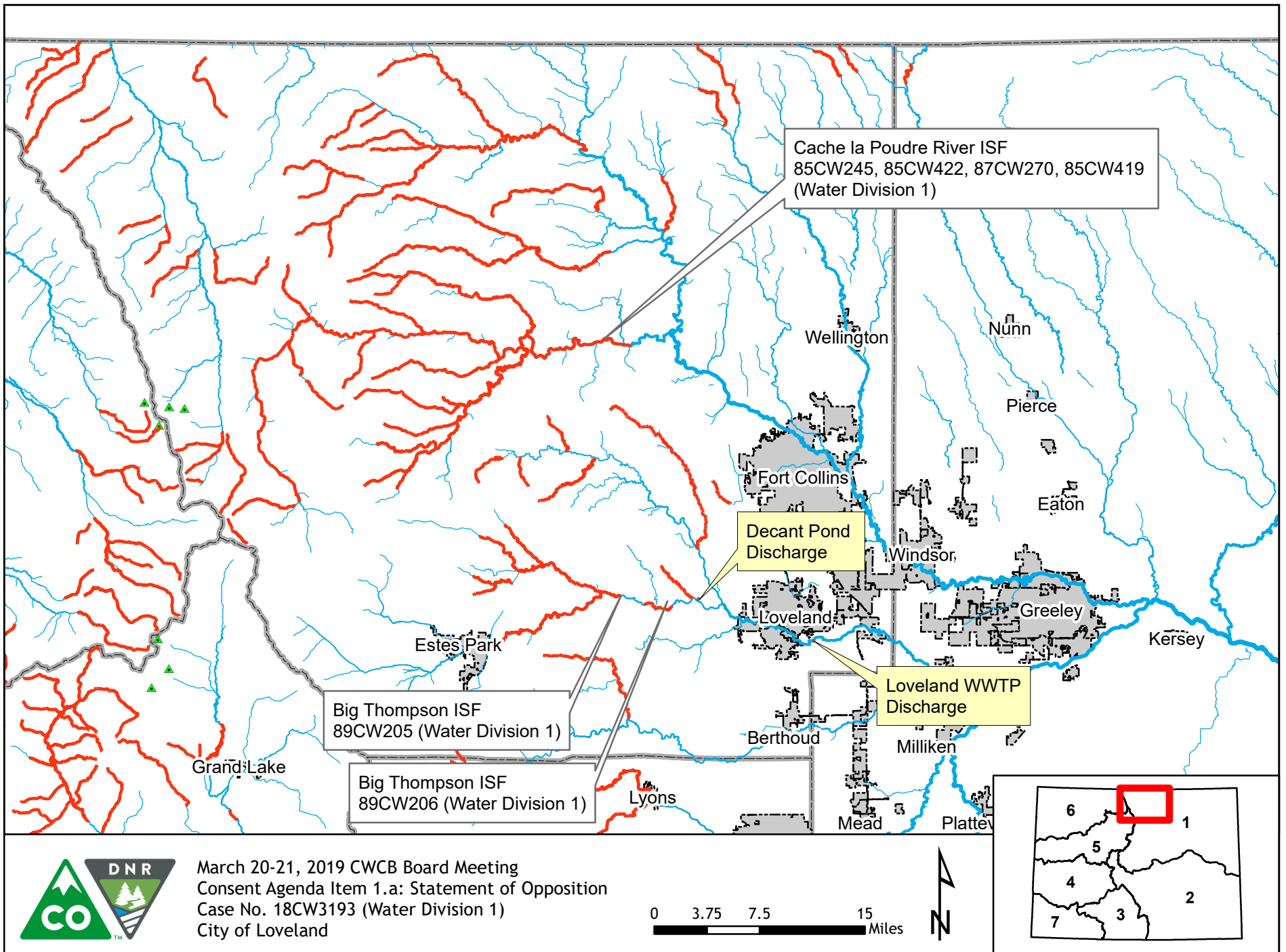
- The extraterritorial use for the water rights cannot be evaluated because the type of use and the place of use is undefined. Without protective terms and conditions, these uses could injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by Central Colorado Water Conservancy District, the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District and the Well Augmentation Subdistrict of the Central Colorado Water Conservancy District, City of Aurora, City of Englewood, City of Evans, City of Greeley, Acting by and through its Water and Sewer Board, Consolidated Hillsborough Ditch Company, the Hillsborough Extension Ditch Company and the Extension Irrigation Company, Greeley & Loveland Irrigation Company, Loveland Ready-Mix Concrete Inc., Northern Colorado Water Conservancy District, the State and Division Engineers Office, Thompson Water Users Association, Town of Berthoud, and the Town of Milliken.

Attorney Representing CWCB

Jeffrey N. Candrian, Senior Assistant Attorney General, is assigned to this case and can be contacted at jeffrey.candrian@coag.gov, or 720-508-6307.



March 20-21, 2019 CWC Board Meeting
Consent Agenda Item 1.a: Statement of Opposition
Case No. 18CW3193 (Water Division 1)
City of Loveland

**DISTRICT COURT, WATER DIVISION 1, COLORADO
NOVEMBER 2018 WATER RESUME PUBLICATION**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications and certain amendments filed in the Office of the Water Clerk during the month of **NOVEMBER 2018** for each County affected.

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18CW3193 City of Loveland, Colorado, c/o Larry Howard, Senior Civil Engineer/Water Resources, 500 East 3rd Street, Loveland, Colorado 80537, Telephone: (970) 962-3703. APPLICATION TO QUANTIFY AND USE RETURN FLOWS IN LARIMER COUNTY. Please send all pleadings and correspondence to: Brian M. Nazarens Esq., Sheela S. Stack, Esq., Ryley Carlock & Applewhite, 1700 Lincoln Street, Suite 3500, Denver, Colorado 80203, Telephone: (303) 863-7500. 2. Background. The City of Loveland (hereinafter "Loveland") is a municipal corporation of the State of Colorado, and is responsible for providing water and wastewater services to approximately 25,000 customers in the Big Thompson River basin in Larimer County, Colorado. The approximate present Loveland water service area boundary is shown on **Exhibit 1**. 3. Purpose of the Application. In Case No. 02CW392, Loveland obtained a decree for changes of senior water rights on the Big Thompson River. As part of that decree, Loveland reserved the right to file an application at a later time to quantify its return flows resulting from irrigation of lawns, parks, golf courses, and other areas ("LIRFs") derived from the changed water rights, and to fully use, reuse, and successively use those LIRF credits. The purpose of this Application is to quantify the LIRFs that Loveland is entitled to claim from Loveland's municipal water system for water delivered in its current and future service area, and to obtain approval to use those LIRFs for the purposes described in paragraph 5, below. In addition, Loveland seeks to quantify effluent return flows from the Loveland Wastewater Treatment Plant ("Loveland WWTP") ("Effluent Return Flows") and return flows from the decant pond from the Loveland Water Treatment Plant ("WTP Return Flows") which are attributable to the fully consumable portion of Loveland's water rights described below. The LIRFs, Effluent Return Flows, and WTP Return Flows are collectively referred to herein as "Return Flows". Return flows from Loveland's municipal water service accrue to the Big Thompson River. Loveland's water service area has been divided into drainage basins for purposes of analysis and quantification of the amount and location of the return flows. The return flow basins are shown on **Exhibit 1**. Loveland's LIRFs accruing to the Big Thompson River will be calculated by Loveland based on surface runoff and deep percolation return flow percentages established in the decree entered in this case. The deep percolation portion of the LIRFs will be quantified based on the "Cottonwood Curve," first approved in Case No. 81CW142, Water Division 1. Loveland claims return flows from reusable water applied prior to this Application that are now accruing to the Big Thompson River, as well as return flows that result from future application. 4. Sources of Return Flows. Water derived from the following sources listed in this paragraph is fully reusable to extinction by Loveland. Unless otherwise noted, Loveland claims all return flows from the following sources in its quantification claimed herein: 4.1. Fully consumable first use water and reusable return flows attributable to the water rights decreed in Case No. 02CW392. 4.2. Fully consumable first use water and reusable return flows attributable to those water rights stored pursuant to the decree entered in Consolidated Case Nos. 00CW108 and 03CW354. 4.3. Loveland's fully consumable direct flow water right for the Loveland Pipeline pursuant to the decrees entered in Case Nos. 04CW358 and 13CW3090. 4.4. Reusable return flows attributable to Windy Gap Project Water in which Loveland currently holds or hereafter acquires an interest. The Windy Gap Project Water is water that is diverted pursuant to the Windy Gap decrees for the Windy Gap water rights which includes the following: (1) Windy Gap Reservoir, decreed in Case Nos. CA1768, 84CW112, 88CW169, 95CW33,

01CW203, and 08CW92; (2) Windy Gap Pump, Pipeline, and Canal, decreed in Case Nos. CA1768, 84CW112, 88CW169, and 89CW298; (3) Windy Gap Pump, Pipeline, and Canal, First Enlargement, decreed in Case Nos. W 4001, 84CW110, 88CW170, and 89CW298; (4) Windy Gap Pump, Pipeline, and Canal, Second Enlargement, decreed in Case Nos. 80CW108, 84CW111, 88CW171, and 89CW298; (5) Jasper Reservoir decreed in Case Nos. CA1768, 84CW112, 88CW169, 95CW33, 01CW203, and 08CW92; and (6) Jasper Pump and Pipeline, decreed in Case Nos. CA1768, 84CW112, 88CW169, 95CW33, 01CW203, and 08CW92. 4.5. Loveland's portion of the fully consumable Gard Water Right pursuant to the decree entered in Case No. 07CW325. 4.6. Fully consumable water exchanged under the appropriative rights of exchange decreed in Case Nos. 02CW393 and 02CW394. 4.7. Such other fully consumable and reusable sources of water that Loveland now holds or may hereafter acquire an interest in. 5. Proposed Uses of LIRFs and Effluent Return Flows. The Return Flows quantified herein are those deliveries of the sources described above that result in both surface return flows and sub-surface return flows. Loveland intends to use Return Flows as they accrue to the Big Thompson River for: (1) replacement of return flow obligations associated with Loveland's changed water rights in Case Nos. 00CW108/03CW354 and 02CW392; (2) use as a substitute supply by exchange or substitution pursuant to decreed substitutions and exchanges and exchanges approved by the State Engineer under then-current statutory authority; and (3) as a replacement source in decreed augmentation plans. Loveland may also use the Return Flows for all municipal purposes including, domestic irrigation, watering of lawns, parks and grounds, commercial, industrial, mechanical, manufacturing, fire protection, sewage treatment, street sprinkling and cleaning, recreational, storage for later use, maintenance of operating detention, replacement, augmentation, exchange, and operation of the municipal water and sewage system. Finally, the Return Flows may be used, reused, successively used, and disposed of to extinction for all lawful purposes, including but not limited to use as a substitute source of supply for augmentation and/or exchange, and including uses outside of Loveland's service area by lease, trade, exchange, sale or such other arrangement entered into by Loveland. 6. Request for Relief. Loveland respectfully requests the following relief: 6.1. Quantification of the amount, timing and location of all of the above-described Return Flows; 6.2. Confirmation that Loveland has retained dominion and control and continues to retain dominion and control over such water after its prior use; and 6.3. Such additional relief that this Court deems just and proper. (5 pages, 1 exhibit)