

Consent Agenda Item 1.h

March 20-21, 2019 Board Meeting

Case No. 18CW3239 (Water Division 1); Benjamin Wolin & Jennifer Rhodes

Summary of Water Court Application

This is an Application for water storage right and approval for plan of augmentation.

Staff Recommendation

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

CWCB Instream Flow Water Rights

The CWCB holds instream flow water rights, including the following water rights in Water Division 1 in the St. Vrain Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-7636-74	Boulder Creek	PSC Hydro Plant outfall	75 th Street bridge	15 (1/1 - 12/31)	10/1/1973
90CW0193^	Boulder Creek	PSC Hydro Plant outfall	75th Street bridge	Amounts vary	Dates vary

^ Donated/Acquired Water Right

Potential for Injury

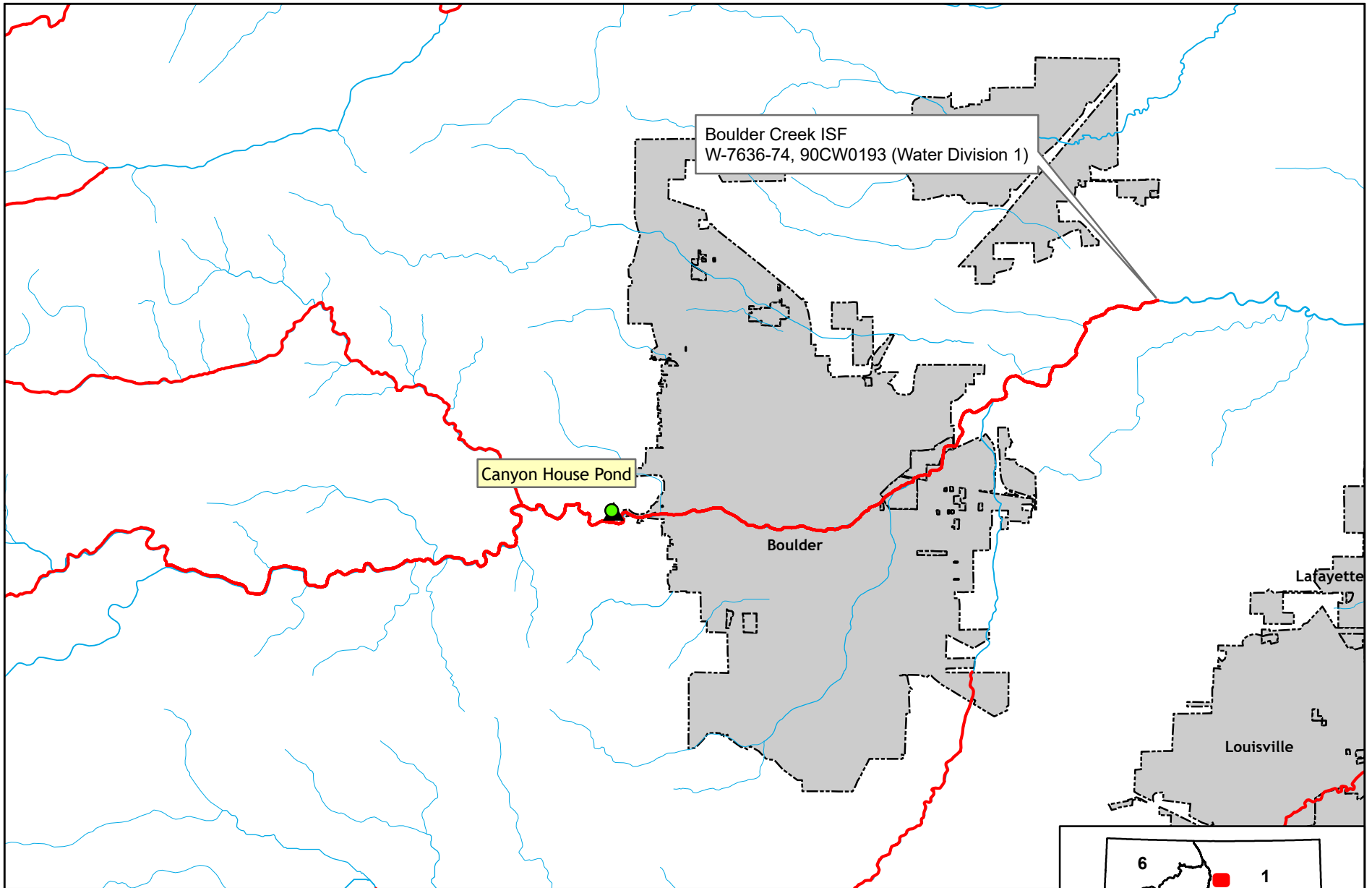
- The claimed appropriation date (1860) for Applicant's water storage right is senior to the appropriated instream flow water right decreed in Case No. W-7636-74. The instream flow water right might be subject to Applicant's water right under section 37-92-102(3)(b), C.R.S., if the appropriation date of the claimed storage water right is sufficiently documented.
- Applicant's claim to continuously fill its pond to keep it full at all times could injure the CWCB's instream flow water rights, because if such use allows a constant flow through diversion, it would be fully depletive to a segment of the intervening instream flow.
- The proposed plan for augmentation may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.

Other Objectors

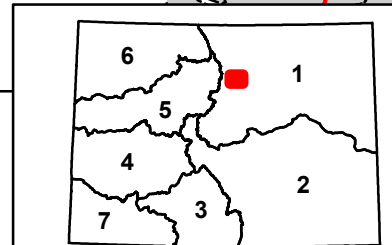
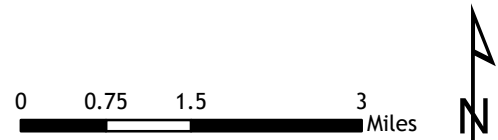
Statements of Opposition were also filed by the City of Boulder, The Anderson Ditch Company, and Water Users Association of District No. 6 .

Attorney Representing CWCB

Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at andy.nicewicz@coag.gov, or 720-508-6259.



March 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.h: Statement of Opposition
 Case No. 18CW3239 (Water Division 1)
 Benjamin Wolin & Jennifer Rhodes



**DISTRICT COURT, WATER DIVISION 1, COLORADO
DECEMBER 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 **DECEMBER 2018** for each County affected.

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18CW3239 Benjamin Wolin and Jennifer Rhodes, together “Applicant,” by and through their attorneys, Hill & Pollock, LLC, for their Application for Water Storage Right and Approval of Plan for Augmentation in **BOULDER COUNTY**, state as follows: Name and Address of Applicant: Benjamin Wolin and Jennifer Rhodes 40420 Boulder Canyon Drive Boulder, Colorado 80301 Direct all communications regarding the matter to: Alan G. Hill Ashley N. Pollock Hill & Pollock, LLC 1528 Wazee Street Denver, Colorado 80202 (303) 993-4452 The purpose of this application is to adjudicate a water storage right and a plan for augmentation for an off-channel pond (“Pond” or “Reservoir”). The Pond is located on Applicant’s property adjacent to Boulder Creek west of Boulder, Colorado. A map showing the location of the claimed water right structure in this application is attached as Exhibit A. **FIRST CLAIM FOR RELIEF** Adjudication of Water Storage Right Name of Pond: Canyon House Pond. Prior decree: None. Legal description: Location of Pond: The centroid of the pond is in the NE1/4 of NE 1/4 of Section 35, Township 1 North, Range 71 West of the 6th PM, Boulder County, Colorado at a point

115 feet from the North Section line and 664 feet from the East Section line. Name and capacity of ditch or ditches used to fill off-channel reservoir: The Canyon House Pond headgate diverts directly into the pond from the west bank of Boulder Creek in the NE1/4 of NE1/4 of Section 35, Township 1 North, Range 71 West of the 6th PM, Boulder County, Colorado at a point 99 feet from the North Section line and 776 feet from the East Section line. Source: Boulder Creek Date of appropriation: 12/31/1860. How appropriation initiated: Commencement of construction in 1860 as evidenced by existence of the Pond. Date water applied to beneficial use: 12/31/1860. Sources filling the structure: Diversions from Boulder Creek and Reusable Return Flows delivered from the Pine Brook Water District. Direct precipitation on the Pond. Amount claimed: In acre-feet: 0.8 acre-feet, with the right of continuous and multiple refills when in priority. Off-channel Pond rate of diversion in cfs for filling the Pond: Approximately 12 cfs. Use: Recreational, piscatorial, and aesthetic. Surface area of high-water line: 0.134 acres. Total capacity of Pond in acre-feet: 0.8 acre-feet, all active capacity. There is no dead storage in the Pond. Name and address of owner of land on which structure for water right is located: Benjamin Wolin and Jennifer Rhodes, 40420 Boulder Canyon Drive, Boulder, Colorado 80301. Applicant requests that the court enter a decree for the water storage rights claimed. SECOND CLAIM FOR RELIEF Approval of Plan for Augmentation Applicant seeks a decree approving a plan for augmentation to augment or replace evaporation and out-of-priority diversions to storage in the Pond that are otherwise not legally exempt from priority administration. Approval of the plan for augmentation would allow Applicant to keep the Pond full of water at times when curtailment or release would otherwise be required. Structure to be Augmented: Evaporation from the Pond and diversions to storage in the Pond described in the First Claim for Relief herein when evaporation and/or diversions under the new storage water right are out of priority and required to be curtailed. Water Rights to be Used for Augmentation: Water purchased from Pine Brook Water District. Applicant has entered into a Water Purchase Agreement with the Pine Brook Water District ("Pine Brook"), a special district of the State of Colorado, under which Pine Brook has agreed to provide fully consumable water under its water rights for augmentation use by Applicant. The augmentation water provided by Pine Brook by purchase or lease will be derived from the water rights described in the decree entered on May 8, 1984 in Case No. 81CW466, District Court for Water Division No. 1, Colorado. The fully consumable water rights owned by Pine Brook and described in the 81CW466 decree include the following One (1) share of Farmers Ditch water. The average historic consumptive use of water represented by Pine Brook's one (1) share is 62.2 acre-feet per year. The Farmers Ditch diverts from the North bank of Boulder Creek in former Water District No. 6 at a point in the NW1/4 of Section 36, Township 1 North, Range 71 West of the 6th P.M., Boulder County, Colorado. Thirty-four (34) shares of Boulder and White Rock Ditch and Reservoir Company water. The average historic consumptive use of water represented by Pine Brook's thirty-four (34) shares is 23.1 acre-feet per year (11.3 acre-feet attributable to direct flow water and 11.8 acre-feet attributable to storage water). The Boulder and White Rock Ditch diverts water from the North bank of Boulder Creek in the SW1/4 SW1/4 of Section 30, Township 1 North, Range 70 West of the 6th P.M. near the Broadway Street Bridge in the City of Boulder, Boulder County, Colorado. An undivided three-fourths (3/4ths) interest in 3.59 cubic feet per second adjudicated to the Wellman, Nichols and Hahn Ditch out of Boulder Creek as transferred by decree of the water court in Water Division No. 1 in Case No. W-8461-77 dated August 8, 1978. Diversions of the subject water right by Pine Brook are limited to 85 acre-feet per year. Pine Brook's interest in the water rights described above were changed from irrigation to municipal, including but not limited to domestic, stock watering, irrigation, and recreation for use either directly by Pine Brook or for replacement or exchange. The points of diversion for Pine Brook's interest in the Farmers Ditch, Wellman, Nichols and Hahn Ditch, and Boulder and White Rock Ditch direct flow rights were changed to allow diversion at the following alternate points of diversion: Well No. P.B. 13 (a/k/a Wittemeyer Well No. 1-9295-F); adjudicated in Case No. W-6325, Water Division No. 1, and located in the SE1/4 SE1/4 of Section 21, Township 1 North, Range 71 West of the 6th P.M., Boulder County, Colorado at a point 1,040 feet North and 710 feet West of the SE corner of said Section 21. Pine Brook Four Mile Surface Diversion (a/k/a Wittemeyer Pump and Pipeline) located in Section 21, Township 1 North, Range 71

West of the 6th P.M., Boulder County, Colorado. Boulder and White Rock Ditch headgate, located as described above. Anderson Ditch headgate, located on the south bank of Boulder Creek in the NE1/4 NE1/4 of Section 35, Township 1 North, Range 71 west of the 6th P.M., Boulder County, Colorado. Pine Brook's interests in the Farmers Ditch, Wellman, Nichols and Hahn Ditch, and Boulder and White Rock Ditch may be stored in the facilities of the Boulder and White Rock Ditch and Reservoir Company, the Anderson Ditch Company, and the Baseline Land and Reservoir Company. The stored water may be released from these storage facilities for replacement and exchange purposes. Pine Brook will make available water from its fully consumable water rights at the above points of diversions or reservoir outlets provided the location is upstream of the calling water right on Boulder Creek or the South Platte River. Water made available by Pine Brook from its fully consumable water rights will be subject to rate of flow and volumetric limits as well as all other relevant terms and conditions included in the 81CW466 Decree. Releases from Pond: Water stored under the storage water rights described in the First Claim for Relief released from the Pond. Additional or alternative augmentation sources added pursuant to § 37-92-305(8)(c), C.R.S. Statement of Plan for **Augmentation** The plan for augmentation is intended to allow for out-of-priority evaporation, and diversions to storage in the Applicant's Pond as necessary to keep the Pond full at all times. Diversions in excess of the volume needed to keep the Pond full are returned immediately to Boulder Creek via overflow outlet structures on the Pond. To the extent that diversions to storage are not legally exempt from priority administration, the proposed plan for augmentation will replace out-of-priority diversions to storage in the Applicant's Pond in the time, amount, and location to prevent material injury to the vested water rights of others. When the storage water rights for the Pond is in priority, then diversions to storage will not require replacement. The total combined annual diversions to storage necessary to replace evaporation from the Pond is estimated at approximately 0.42 acre-feet annually. Applicant's plan for augmentation will replace out-of-priority diversions as necessary to meet the lawful requirements of senior diverters at the time and location and to the extent that seniors would be deprived of their lawful entitlement. The operation of Applicant's plan for augmentation will not injuriously affect the owners of or persons entitled to use water rights under vested water rights or decreed conditional water rights. WHEREFORE, Applicant prays for a decree adjudicating the water storage right described herein, and approving the plan for augmentation described herein; finding that the proposed plan for augmentation is contemplated by law and approving the plan; finding that the owners and users of vested water rights and conditional water rights will not be adversely affected by depletions from the Pond if the proposed augmentation plan is operated under the terms and conditions of a decree entered herein; and for such further relief as the court deems proper.