

Consent Agenda Item 1.k

March 15-16, 2023 Board Meeting

Case No. 22CW3049 (Water Division 7); Bootjack Ranch, LLC

Summary of Water Court Application

Application for Absolute Surface and Storage Water Rights and Conditional Surface Water Right.

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 rights in Water Division 7 in the Upper San Juan River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
80CW0031	Wolf Creek	headwaters in vicinity	confl WF San Juan River	11 (3/1 - 8/31) 6 (9/1 - 2/29)	01/30/1980
80CW0040	San Juan River	confl EF & WF San Juan River	confl McCabe Creek	50 (3/1 - 8/31) 30 (9/1 - 2/29)	01/30/1980
80CW0041	West Fork San Juan River	confl Wolf Creek	confl EF San Juan River	25 (4/1 - 8/31) 14 (9/1 - 3/31)	01/30/1980

Potential for Injury

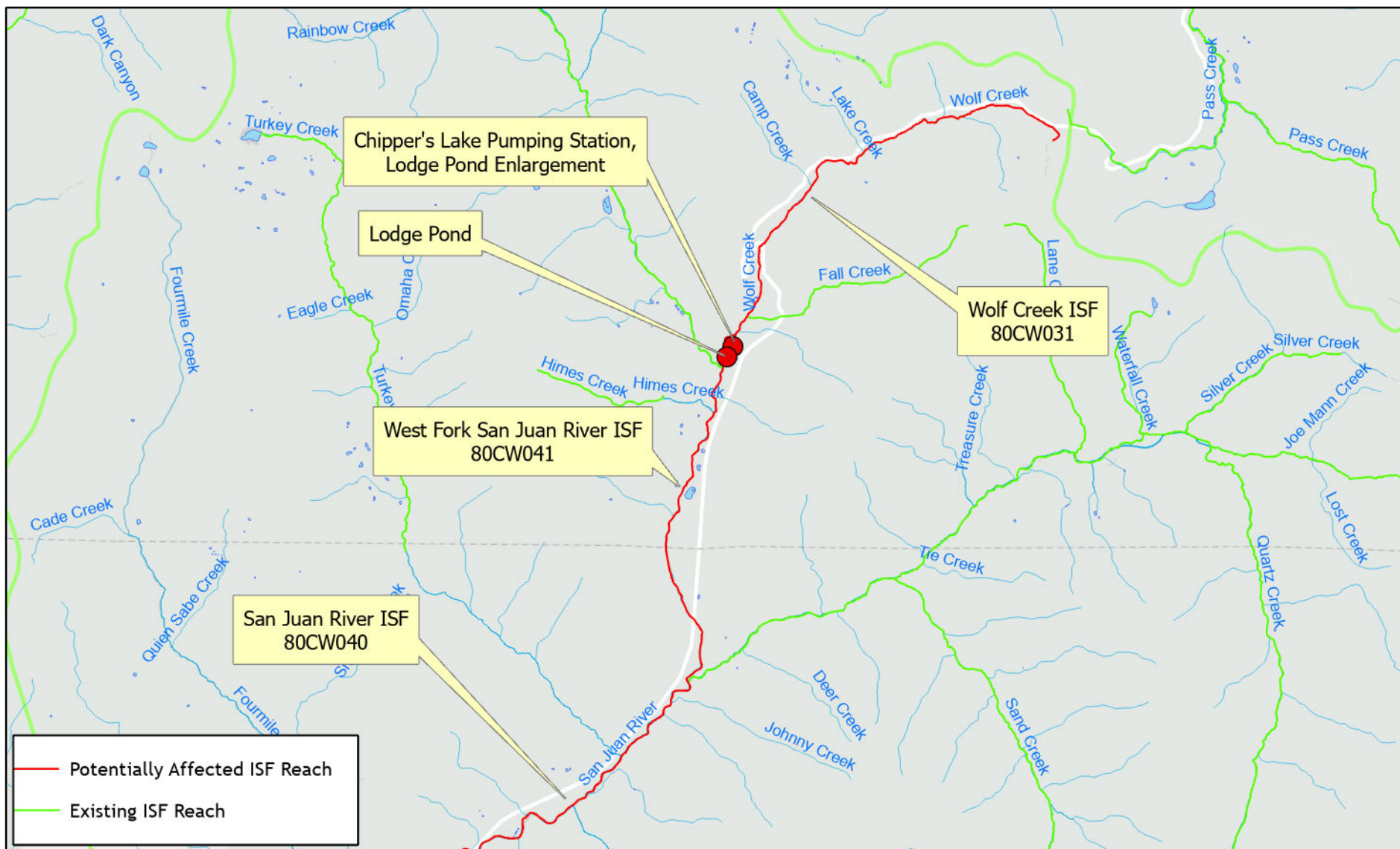
- Applicant claims the proposed use of year-round freshening of Lodge Pond under the Chipper's Lake Pumping Station, Lodge Pond Enlargement direct flow surface water right. This appears to present a claim for a flow through water right. This operation could injure the CWCB's instream flow water rights because it is fully depletive to a segment of the intervening instream flow.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights.

Other Objectors

A Statement of Opposition was also filed by San Juan Water Conservancy District.

Attorney Representing CWCB

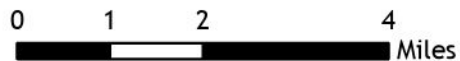
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2023 CWCB Board Meeting
 Consent Agenda Item 1.k: Statement of Opposition
 Case No. 22CW3049 (Water Division 7)
 Bootjack Ranch, LLC



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 December 2022, for each county affected.

22CW3049 IN MINERAL COUNTY. APPLICATION FOR ABSOLUTE SURFACE AND STORAGE WATER RIGHTS AND CONDITIONAL SURFACE WATER RIGHT 1. Name, Mailing Address, and Telephone Number of Applicant. **Bootjack Ranch, LLC** ("Bootjack Ranch") 12500 East Highway 160 Pagosa Springs, CO 81147 (970) 264-7280. PLEASE SEND ALL CORRESPONDENCE AND PLEADINGS TO: Wayne F. Forman, #14082 and Courtney M. Shephard, #47668 at BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 17th Street, Suite 2200 Denver, CO 80202 Phone: (303) 223-1100 E-mail: wforman@bhfs.com; cshephard@bhfs.com 2. New Conditional and Absolute Direct Flow Surface Water Right. a. Name: Chipper's Lake Pumping Station, Lodge Pond Enlargement. b. Legal Description: NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, Township 37 North, Range 1 East, N.M.P.M., Mineral County, Colorado. UTM Easting: 332,769 meters UTM Northing: 4,144,912 meters. Zone 13 North (NAD83). c. Source: Wolf Creek, a tributary to West Fork of the San Juan River. d. Appropriation Date: June 29, 2022. i. How Appropriation Was Initiated: SGM, Inc. developed engineering plans for the Chipper's Lake Pumping Station, Lodge Pond Enlargement, and Lodge Pond, and submitted a Notice of Intent to the Division 7 Engineer's Office. ii. Date Water Applied to Beneficial Use: During October 2022, Bootjack Ranch diverted 1.78 c.f.s., which is the maximum capacity of the pump, for a total volume of 20.1 acre-feet to test the pump and fill Lodge Pond, and replace evaporation and seepage. *See* Exhibit A. e. Amount: 1.78 c.f.s. (800 gpm), absolute, for delivery into the Lodge Pond, and 0.55 c.f.s., conditional, for irrigation of 11 acres. f. Uses: Absolute for storage in, fill, and successive refill of Lodge Pond, firefighting, and replacing evaporation in and year-round freshening of Lodge Pond; and conditional for irrigation. g. Irrigated Area Description: 11 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20 and NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 37 North, Range 1 East, N.M.P.M, east of Chipper's Lake as shown on Figure 1 in combination with the Dermody Pump and Wolf Creek Village Well No. 1. *See* Figure 1. 3. New Absolute Water Storage Right. a. Name: Lodge Pond. b. Legal Description: NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, Township 37 North, Range 1 East, N.M.P.M., Mineral County, Colorado. UTM Easting: 332,724 meters UTM Northing: 4,144,680 meters. Zone 13 North (NAD83). c. Surface Area: 1.9 acres. d. Total Capacity: 14.1 ace-feet. e. Type: Unlined, off-channel. f. Dam Height: 10 feet, non-jurisdictional. g. Amount: 14.1 acre-feet, absolute. *See* Exhibit B. h. Source: Wolf Creek, a tributary to West Fork of the San Juan River via the Chipper's Lake Pumping Station. i. Appropriation Date: June 29, 2022. j. How Appropriation Was Initiated: SGM, Inc. developed engineering plans for the Chipper's Lake Pumping Station, Lodge Pond Enlargement, and Lodge Pond and submitted a Notice of Intent to the Division 7 Engineer's Office. ii. Date Water Applied to Beneficial Use: Bootjack Ranch filled Lodge Pond with 14.1 acre-feet of water during October, 2022. j. Annual Gross Evaporation: 5.94 acre-feet. k. Uses: Absolute for storage, aesthetic, recreation, piscatorial, firefighting, irrigation, augmentation. l. Irrigated Area Description: Irrigation of 6.8 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, Township 37 North, Range 1 East, N.M.P.M., around the Lodge Pond as shown on Figure 1, in

Attachment
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combination with the Dermody Pump and Wolf Creek Village Well No. 1. 4. Names and Addresses of Owners of the Land on Which the Structures are Located and Water Will be Placed to Beneficial Use:

Bootjack Ranch constructed all structures and will place all water to beneficial use on land owned by Bootjack Ranch (address in paragraph 1, above). WHEREFORE, Bootjack Ranch requests that the Court enter a decree: A. Granting Bootjack Ranch absolute water rights for Chipper's Lake Pumping Station, Lodge Pond Enlargement and Lodge Pond as described in paragraphs 2 and 3; B. Granting Bootjack Ranch a conditional water right for Chipper's Lake Pumping Station, Lodge Pond Enlargement, as described in paragraph 2; and C. Granting such other relief as the Court deems just and proper (7 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 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 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 Wills, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-247-2304)

Published: before January 31, 2023

/s/Stephanie Wills
Water Court Specialist

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 37-92309(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 37-80124(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/>.