

Consent Agenda Item 1.b

May 15-16, 2019 Board Meeting

Case No. 19CW3019 (Water Division 1); Fort Collins - Loveland Water District

Summary of Water Court Application

This is an Application to quantify municipal return flows for use in an augmentation plan and for use to meet return flow obligations.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in March 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 use allows applicant to lease excess credits to third parties. The claim is not limited; therefore, points of depletion upstream within CWCB's instream flow reaches could be allowed using such leased water.

Potential for Injury

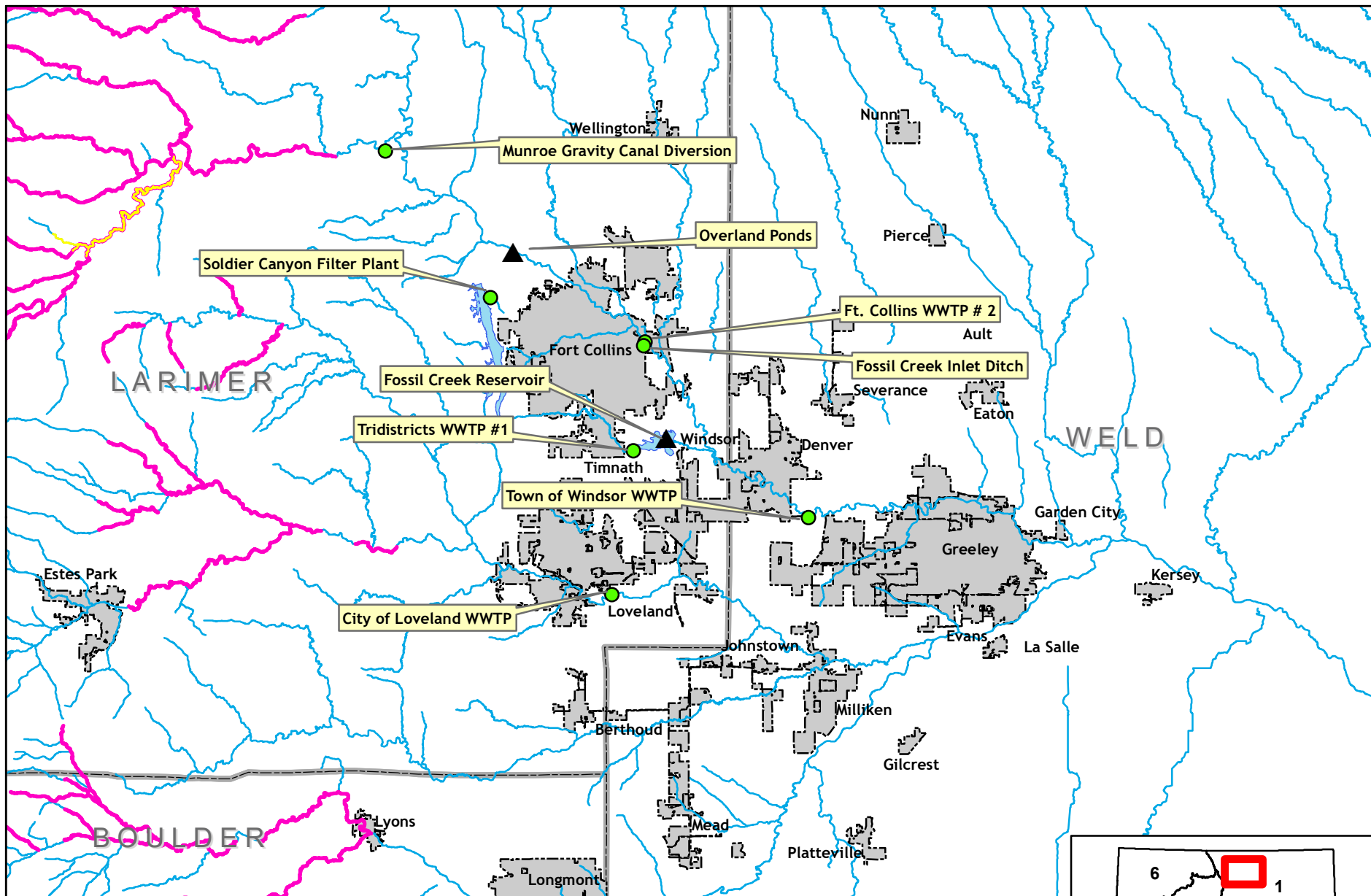
- The CWCB many holds water rights in Water Division 1 that could be injured by this application.
- Apparent extraterritorial uses "by sale, contract, exchange or otherwise to extinction" for the quantified water rights cannot be evaluated because some of the types and points of depletions are undefined. These uses could injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by Cache la Poudre Water Users Association, City of Aurora, City of Englewood, City of Fort Collins, City of Greeley Water & Sewer Board, City of Loveland, City of Widsor, North Poudre Irrigation Company, and Thompson Water Users Association.

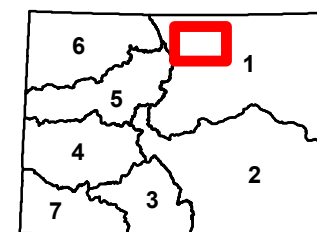
Attorney Representing CWCB

Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



May 15-16, 2019 CWCB Board Meeting
 Consent Agenda Item 1b: Statement of Opposition
 Case No. 19CW3019 (Water Division 1)
 Fort Collins - Loveland Water District

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**DISTRICT COURT, WATER DIVISION 1, COLORADO
JANUARY 2019 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 **JANUARY 2019** for each County affected.

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19CW3019 Fort Collins – Loveland Water District (“Applicant”), Attn: Chris Matkins, General

Manager, 5150 Snead Drive, Fort Collins, CO 80525. Scott Holwick, Kara Godbehere, Lyons Gaddis, PO Box 978, Longmont, CO 80502-0978.

APPLICATION TO QUANTIFY MUNICIPAL RETURN FLOWS FOR USE IN AUGMENTATION PLAN AND FOR USE TO MEET RETURN FLOW OBLIGATIONS in LARIMER and WELD COUNTIES.

2. Introduction. Applicant is a quasi-municipal corporation which supplies and distributes treated water to residents, schools, businesses, and recreation areas within its service area located in Larimer and Weld Counties and to other contract customers located outside of its service area. A map depicting Applicant’s service area, which is located entirely within the South Platte River Basin, is attached as Figure No. 1. In 2018, Applicant had approximately 17,740 service taps that supplied 10,376 acre-feet of water to customers. Through projected population growth and development within its service area, Applicant anticipates that the demand for water supplies will continue to increase in the future. By this application, Applicant seeks a judicial determination of the amount and timing of a portion of its municipal return flows attributable to the indoor use of its fully reusable water sources within its service area. Additionally, Applicant has a current need to augment out-of-priority depletions from ongoing sand and gravel operations and to replace existing return flow obligations. Accordingly, Applicant seeks confirmation that such municipal return flows may be used in an existing augmentation plan and as a replacement source by which to help meet its existing return flow obligations. 3. Purpose. The purpose of this application is to quantify the reusable portion of the sewer return flows attributable to the use of Applicant’s fully reusable water sources within its service area. A portion of the treated water Applicant delivers to its customers is consumed, and a portion is returned to the stream system as either sewer or non-sewer return flows. Return flows from Applicant’s service area accrue to the Cache la Poudre River and the Big Thompson River. Non-sewer return flows result from outdoor uses of delivered water – primarily the irrigation of lawns and other landscaped areas. Sewer return flows result from the indoor use of delivered water. A portion of the wastewater resulting from indoor water use within Applicant’s service area is treated by the City of Fort Collins (WWTP #2), a portion is treated by the South Fort Collins Sanitation District, a portion is treated by the Town of Windsor, and a portion is treated by the City of Loveland (the portions of treated wastewater that the four entities return to the stream system is collectively referred to herein as “Municipal Return Flows”). The location of each of the four wastewater treatment facilities is depicted on Figure No. 2. For the purpose of this application, the Municipal Return Flows do not include non-sewer return flows (primarily lawn irrigation return flows). Applicant expressly reserves its right to quantify and claim credit for such non-sewer return flows in one or more future water court applications, or in an administrative proceeding to approve the non-sewer return flows for temporary use(s). Additionally, for the purpose of this application, distribution system losses such as normal water main leakage or pipe breakage are not included. In this application,

Applicant seeks to adjudicate a methodology by which to quantify the Municipal Return Flows accruing from the fully reusable water sources used in its municipal system, through the use of any fully reusable water source that Applicant is entitled to use. The fully reusable water sources for which Applicant currently may claim the Municipal Return Flows under this application are specifically identified in ¶ 6, below.

4. Need. By 2050, Applicant projects that it will have an annual demand of approximately 15,080 acre-feet excluding a safety factor. The Municipal Return Flows quantified herein will be one of a number of water sources within Applicant's portfolio which Applicant will rely upon to meet the current and future needs of its municipal demands. Specifically, Applicant seeks confirmation that it may use the Municipal Return Flow credits to meet its:

- A. Augmentation obligations pursuant to the plan administratively approved by the State Engineer's Office for its Combined SB-120 Substitute Water Supply Plan Renewal for Treiber Lakes, M-2011-049 and Home Office Pit, M-77-439 Part A;
- B. Return flow replacement obligations pursuant to the decree entered in Case No. 05CW264;
- C. Return flow replacement obligations pursuant to the decree entered in Case No. 08CW277;
- D. Return flow replacement obligations to the extent any such obligations are confirmed by a decree of this Court pursuant to the decree entered in pending Case No. 17CW3160; and
- E. Any other augmentation and/or return flow replacement obligations to which Applicant is required to make pursuant to decree or administratively approved temporary substitute water supply plan.

5. Quantification of the Municipal Return Flows. Applicant is one of three Title 32 special districts collectively known as the Tri-Districts. The other two districts are the North Weld County Water District and the East Larimer County Water District. The East Larimer County Water District quantified its municipal return flows in Case No. 09CW282, the decree for which was entered by Water Court for Water Division No. 1 on June 29, 2012. The North Weld County Water District quantified its municipal return flows in Case No. 13CW3141, the decree for which was entered by Water Court for Water Division No. 1 on January 12, 2016. Applicant will use the methodology adjudicated in both preceding cases as the basis for the quantification of the Municipal Return Flows in this case.

A. Sewer Service; Facility Locations. Each service tap receiving sewer service is assigned to one of:

- (1) The City of Fort Collins Wastewater Treatment Plant #2, which is located in the SE1/4 of the SE1/4 of Section 20, Township 7 North, Range 68 West of 6th P.M., in Larimer County, and which holds a permit from the State of Colorado to discharge effluent at latitude 40.555277, longitude -105.020555;
- (2) The South Fort Collins Sanitation District Wastewater Treatment Plant, which is located in the NW1/4 of the SE1/4 of Section 17, Township 6 North, Range 68 West of 6th P.M., in Larimer County, and which holds a permit from the State of Colorado to discharge effluent at latitude 40.483889, longitude -105.028056;
- (3) The Town of Windsor Wastewater Treatment Plant, which is located in the SW1/4 of the SE1/4 of Section 34, Township 6 North, Range 67 West of 6th P.M., in Weld County, and which holds a permit from the State of Colorado to discharge effluent at latitude 40.438888, longitude -104.873611; or
- (4) (1) The City of Loveland Wastewater Treatment Plant, which is located in the SW1/4 of the NW1/4 of Section 19, Township 5 North, Range 68 West of 6th P.M., in Larimer County, and which holds a permit from the State of Colorado to discharge effluent at latitude 40.383333, longitude -105.05.

Applicant's return flows generated from each of the four wastewater treatment plants will be apportioned based upon the average base use determined from the prior three years of metered water use for the service taps assigned to each wastewater treatment facility.

B. Municipal Return Flow Locations. Applicant's service area covers a large geographic area. The Municipal Return Flows generated from water delivered to its customers and used by such customers for indoor water uses ultimately will accrue to the Cache la Poudre and the Big Thompson Rivers from the respective wastewater treatment facilities at locations as follow:

- (1) Fort Collins primarily discharges into the Fossil Creek Inlet, however has the option of discharging directly into the Poudre River. The City of Fort Collins will notify Applicant if any of Applicant's return flows are discharged into a location other than the Fossil Creek Reservoir Inlet. Applicant will not store its reusable effluent credits in Fossil Creek Reservoir, but will take credit for all return flows derived from its fully reusable water sources that are

discharged to the Cache la Poudre River. (2) Reusable effluent from the South Fort Collins Sanitation District is discharged directly into Fossil Creek Reservoir and will pass through and into the Cache la Poudre River. Applicant will not store reusable effluent in Fossil Creek Reservoir, but will take credit for all return flows derived from its fully reusable water sources that are discharged to the Cache la Poudre River. (3) Wastewater sent to the Town of Windsor WWTP is treated in a lagoon system. Applicant will take credit for all return flows derived from its fully reusable water sources that are discharged to the Cache la Poudre River. (4) The Loveland WWTP discharges into the Big Thompson River. Applicant can only take credit for all return flows derived from its fully reusable water sources accruing to Big Thompson River for augmentation or to replace return flows when the calling right is located below the confluence of the Cache la Poudre River and the South Platte River. C. Municipal Return Flow Credits Claimed. Applicant will calculate the Municipal Return Flows accruing to the Cache la Poudre and the Big Thompson Rivers based upon the return flow percentages established in the methodology adjudicated in this case. The methodology sought to be approved is based upon that methodology previously approved in the decrees entered in Case Nos. 09CW282 and 13CW3141. By such quantification, Applicant claims the Municipal Return Flows from fully reusable water applied prior to this application that are now accruing to the Cache la Poudre and Big Thompson Rivers as well as the Municipal 40 Return Flows that will result from future use of such fully reusable water. 6. Sources of the Municipal Return Flows. The water that Applicant delivers for municipal uses from the sources listed in this paragraph is fully consumable and may be used to extinction. Accordingly, a portion of the Municipal Return Flows returning to the Cache la Poudre and Big Thompson Rivers is fully reusable. Applicant retains dominion and control over its consumptive use and transbasin water sources until the water has been used, reused, and successively used to extinction. Unless otherwise noted, Applicant claims the ability to use all of the return flows from the following fully reusable sources once the Municipal Return Flows are quantified by the methodology subject of this application: A. Water attributable to the Class B shares in the Divide Canal and Reservoir Company (Sand Creek Ditch water right changed in Case No. 89CW071). B. Water attributable to the water rights decreed in Case No. 98CW435 (Pleasant Valley Pipeline). C. Water attributable to the water rights decreed in Case No. 00CW251 (Overland Trail Reservoirs). D. Water attributable to the John R. Brown water right changed in Case No. 05CW264. E. Water attributable to the Class B shares in the Windsor Reservoir and Canal Company (Tunnel Water Company water right changed in Case No. 06CW259). F. Water attributable to the Jackson Ditch Company water right changed in Case No. 08CW277. G. Water attributable to the water rights claimed in pending Case No. 17CW3160, to the extent any water rights are confirmed by a decree of this Court (John R. Brown). H. Applicant is a participant in and claims the right to use water attributable to the Northern Integrated Supply Project (NISP), to the extent NISP is completed and yields water. The Galetton Reservoir portion of the NISP water rights are reusable. Applicant will claim reusable effluent from its diversions of this portion of the yield from its ownership in NISP. I. Other transbasin and fully consumable in-basin water rights which are available for municipal use that Applicant develops, adjudicates, buys, leases, or otherwise acquires in the future, including but not limited to shares owned but not yet changed in the Larimer County Canal No. 2 Irrigating Company, the New Mercer Ditch Company and the Divide Reservoir and Canal Company. 7. Proposed Uses of Municipal Return Flows: At this time, Applicant is only quantifying the Municipal Return Flows from the reusable component of the water it delivers for indoor use which is subsequently treated by the four wastewater treatment facilities. The reusable credits will return to the Cache la Poudre and the Big Thompson Rivers as treated effluent. Applicant's use of the Municipal Return Flows from its portfolio will be to meet obligations for augmentation and return flow replacement, as more specifically identified in ¶ 4, above. When upstream of a valid calling right, Applicant will use its the Municipal Return Flow credits to replace return flow obligations and augmentation obligations. Applicant expressly reserves its right to lease excess reusable Municipal Return Flow credits, if any, to third parties. 8. Dominion, Control and Intent to Reuse. Applicant claims all dominion and control of all the Municipal Return Flows after initial use, and claims the right to reuse, successively use, and dispose of the Municipal Return Flows by sale, contract, exchange, or otherwise to extinction. 9. Non-Injury. Applicant's use of the Municipal Return Flows

claimed herein shall be such that no material injury will be experienced by holders or users of vested or decreed conditional water rights and that the flow regimen of the stream system shall not be materially affected. 10 . Names and Addresses of Owners of Land. Applicant; see ¶ 1, above. 11. Relief. Applicant respectfully requests the following relief: A. Quantification of the amount, timing and location of all of the above described Municipal Return Flows; B. Confirmation that Applicant has retained dominion and control and continues to retain dominion and control over its reusable water after use; and C. Confirmation that the Municipal Return Flows may be used, reused and successfully to extinction for the purposes identified herein.