

Consent Agenda Item 1.a

March 10-11, 2021 Board Meeting

Case No. 20CW3165 (Water Division 1); Board of County Commissioners of the County of Clear Creek and Clear Creek School District RE-1

Summary of Water Court Application

Application for Third Amendment to Plan for Augmentation.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in January 2021 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 1 in the Upper South Platte River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
94CW0258 (Div. 1)	Bear Creek	confl Truesdell Creek	inlet Evergreen Lake	10 (4/15 - 10/15) 5 (10/16 - 4/14)	09/13/1994
94CW0259 (Div. 1)	Bear Creek	outlet Evergreen Lake	confl Swede Gulch	5 (10/16 - 4/14) 9.9 (4/15 - 10/15)	09/13/1994
94CW0260 (Div. 1)	Bear Creek	confl Swede Gulch	hdgt Harriman Ditch	14.9 (4/1 - 10/15) 7 (10/16 - 3/31)	09/13/1994

Potential for Injury

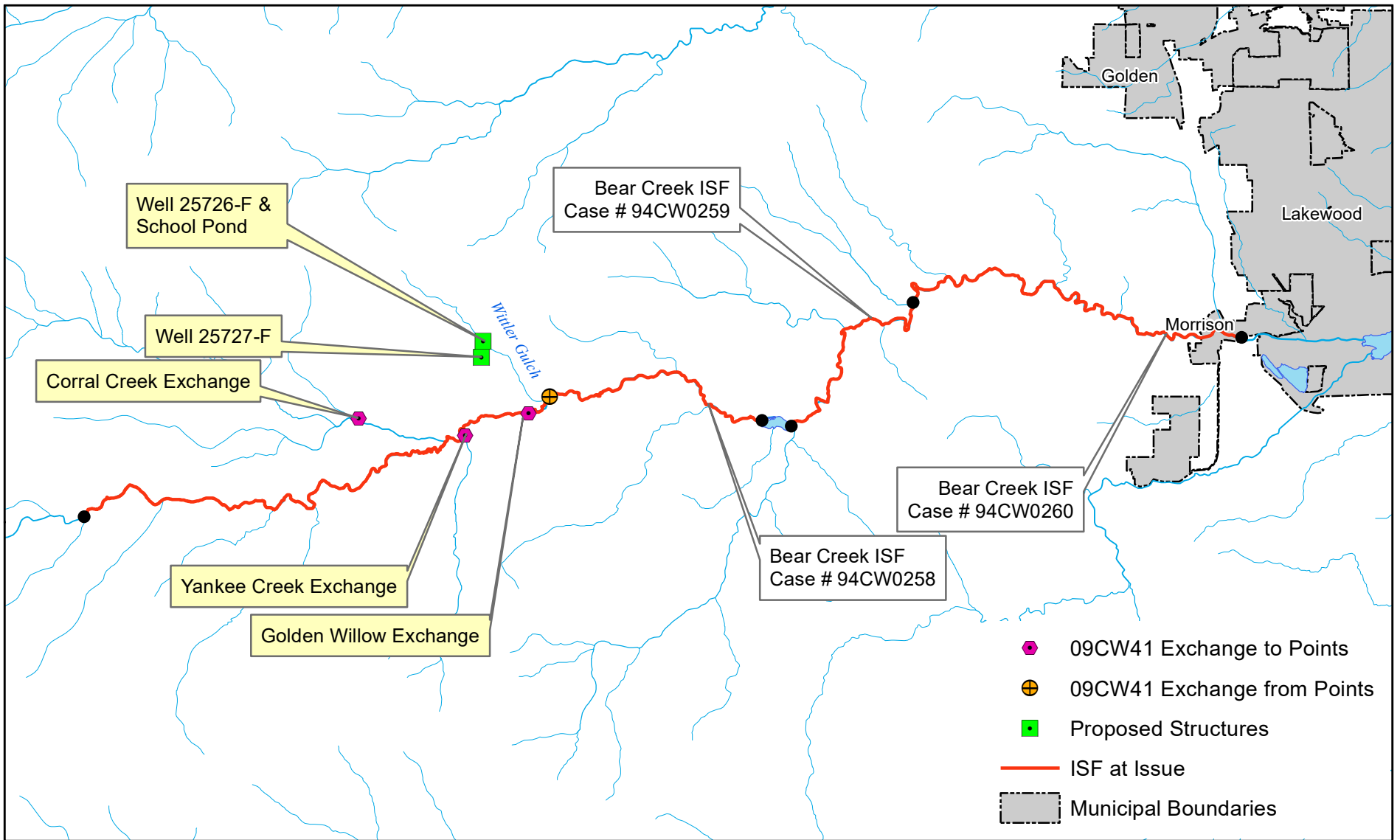
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition (as of February 24, 2021) were also filed by Evergreen Metropolitan District, and the State and Division Engineers.

Attorney Representing CWCB

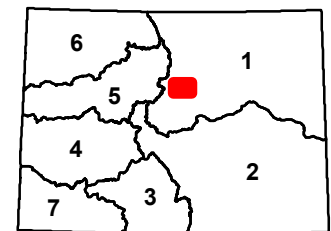
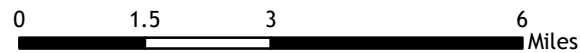
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting
 Consent Agenda Item 1.a. Statement of Opposition
 Case No. 20CW3165 (Division 1)
 Board of County Commissioners of the County of
 Clear Creek and Clear Creek School District RE-1



**DISTRICT COURT, WATER DIVISION 1, COLORADO
NOVEMBER 2020 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 2020** for each County affected.

20CW3165 BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLEAR CREEK AND CLEAR CREEK SCHOOL DISTRICT RE-1, Board of county commissioners of the county of Clear Creek (the “County”), c/o Water Resources Department, P.O. Box 2000, Georgetown, Colorado 80444; (303) 679-2434; lleben@clearcreekcounty.us and Clear Creek School District RE-1 (“School District”), c/o Superintendent, P.O. Box 3399, 320 Hwy. 103, Idaho Springs, CO 80453, (303) 567-2980, Justin.Watanabe@ccsdre1.org. Please direct all correspondence concerning this Application to: Paul Zilis, Esq., Alison I. D. Gorsevski, Esq., Andrea A. Kehrl, Esq. and Peter C. Johnson, Esq., Vranesh and Raisch, LLP, 5303 Spine Road, Suite 202, Boulder, Colorado 80301; Telephone Number: (303) 443-6151; E-Mail: pjz@vrlaw.com; adg@vrlaw.com; aak@vrlaw.com; and pcj@vrlaw.com; and James J. Petrock, Esq., Petrock Fendel Poznanovic, 700 17th Street, Suite 1800, Denver, Colorado 80202; Telephone Number: (303) 534-0702; Email: jjp@petrockfendel.com. **APPLICATION FOR THIRD AMENDMENT TO PLAN FOR AUGMENTATION IN CLEAR CREEK AND JEFFERSON COUNTIES.** 2. Purpose: This Application seeks approval of amendments to the plan for augmentation previously decreed in Case No. 80CW289, Water Division 1, State of Colorado, dated May 7, 1982 (“80CW289 Decree”), as amended by that Order Amending Decree, dated December 19, 1983 (“Order”). That plan for augmentation was subsequently amended by decrees entered in Case No. 06CW025, Water Division 1, State of Colorado, dated September 5, 2006 (“06CW025 Decree”), and in Case No. 09CW041, Water Division 1, State of Colorado, dated November 24, 2009 (“09CW041 Decree”). The subject plan for augmentation, including its amendments, is referred to herein as the “Augmentation Plan.” A map showing the key structures involved in the Augmentation Plan is attached as **Exhibit A**. 3. Summary of the Augmentation Plan: a. *Original augmented structures:* i. Clear Creek Well No. 1: located in the SE 1/4 NW 1/4, Section 2, Township 5 South, Range 72 West, 6th P.M., County of Clear Creek, approximately 1370 feet south of the north section line and 3040 feet west of the east section line of said section. ii. Clear Creek School Well No. 3: located in the NE 1/4 NW 1/4, Section 2, Township 5 South, Range 72 West, 6th P.M., County of Clear Creek, approximately 30 feet south of the north section line and 2805 west of the east section line of said section. (1) *Appropriation:* Clear Creek School Well Nos. 1 and 3 (“Wells”) pump groundwater tributary to Witter Gulch, a tributary of Bear Creek. The Wells are decreed to divert a combined total of 7.38 acre feet of water per year, at a combined pumping rate of 10 g.p.m (0.0223 cfs). Water pumped from the Wells is used for municipal and domestic in-building purposes within an elementary school. b. *Sources of augmentation supply:* One-half share of the Warrior Ditch Company (“Warrior Half Share”). In the 80CW289 Decree, the School District changed the Warrior Half Share and, subject to the terms and conditions of that decree, quantified the consumptive use of the half share as 6.225 acre feet of water per year, at a rate of 0.1232 cfs. i. *Appropriation dates:* The School District’s pro-rata share of the Warrior Ditch water rights include: Priority No. 4 (December 1, 1861) – 0.0385 cfs; Priority No. 14 (October 31, 1864) – 0.0796 cfs; and Priority No. 16 (April 1, 1865) – 0.0359 cfs. Consistent with the terms of the 80CW289 Decree, water available to the Warrior Half Share under the Warrior Ditch’s Turkey Creek Priority (Priority No. 8) water right will remain in the ditch and is not affected by this Application. ii. *Original changed uses:* The Warrior Half Share was changed for the School District’s municipal, indoor domestic, and storage and augmentation use by the 80CW289 Decree. The location of storage is in a reservoir on Witter Gulch, located in the N 1/2 of Section 2, Township 5 South, Range 72 West of the 6th P.M., County of Clear Creek, Colorado (“School Pond”). iii. *Additional decreed uses.* In the 06CW025 Decree, Warrior Half Share water in storage in School Pond was changed for the County’s Road and Bridge Department’s dust suppression, road compaction, and related maintenance uses (collectively, “County Uses”), in addition to the School District’s uses. Pursuant to the terms and conditions of the 06CW025

Decree, the School District can release up to 1.5 acre feet of Warrior Half Share water for the County Uses. The County delivers Warrior Half Share water to its locations of use through the operation of appropriative rights of exchange on Bear Creek decreed in the 09CW041 Decree. The exchanges in the 09CW041 Decree are not the subject of this Application. c. *Summary description of the Augmentation Plan*: Water pumped from the Wells is used to serve water to an elementary school located in the NW 1/4 of Section 2, Township 5 South, Range 72 West of the 6th P.M., County of Clear Creek, Colorado. The total lagged depletions associated with pumping the Wells are estimated as 0.37 acre-feet per year. Any out-of-priority depletions from the Wells are augmented using water available under the Warrior Half Share. The Warrior Half Share water is diverted through operation of a decreed exchange (“80CW289 Exchange”) into School Pond for the School District’s and the County’s Uses. Of the water in storage, 2.25 acre feet per year is applied to evaporation losses and the remainder is released for the County’s Uses or for augmentation purposes to replace aggregated out-of-priority depletions at the times and in the amounts required by the Augmentation Plan. 4. Claim for approval of amendments to the Augmentation Plan: Due to recent infrastructure improvements at School Pond, Applicants seek approval of certain amendments to the Augmentation Plan to improve the operation of the pond as an augmentation structure within the plan, to maintain Witter Gulch as a free flowing stream as much as possible, and decree an exchange program within the plan. a. *Basis of the claim*: School Pond is located within the Witter Gulch drainage, an intermittent stream system. The School District has installed a new bypass structure on Witter Gulch at the inlet of School Pond. This allows the pond to operate as an off-channel reservoir, and native flows in the stream can be bypassed around the pond to maintain natural stream flows when the School District is not storing water available under its Warrior Half Share. b. *Description of amendments*: Applicants seek to modify certain terms and conditions applicable to operation of the Augmentation Plan, including but not limited to terms related to the storage, operation, and release of water from School Pond described in paragraph 5 of the decretal section of the 80CW289 Decree, as amended by the Order (“Paragraph 5 Terms”), and to decree an exchange program within the Augmentation Plan. When Warrior Half Share water is available, that water will be: (1) delivered to the downstream calling water right for immediate augmentation use through the operation of an exchange program within the Augmentation Plan; or (2) exchanged upstream through operation of the 80CW289 Exchange, measured at the measuring devices to be installed upstream of School Pond and delivered to the downstream calling water right for immediate augmentation use via the bypass channel around School Pond; or (3) exchanged upstream through operation of the 80CW289 Exchange, measured at the measuring devices to be installed upstream of and at School Pond, and delivered into storage in School Pond for subsequent release for augmentation purposes, which releases will be measured at the measuring device downstream of School Pond, to replace out-of-priority depletions under the terms of the Augmentation Plan and for the County Uses. Further, Applicants seek to eliminate the requirement to fill and empty the School Pond twice a year, at its current capacity or at any future capacity, and instead will leave natural flows in the stream, except the Warrior Ditch Half Share water which is exchanged into the School Pond through operation of the 80CW289 Exchange. Additionally, Applicants seek to eliminate the requirement to store 2.25 acre feet of Warrior Half Share water to replace evaporation losses that were occurring when the School Pond was on-channel. As an off-channel reservoir, only senior Warrior Ditch Half Share water will be stored, and there is no interception of ground water. Finally, Applicants seek to eliminate the pumping rate limitations in the Paragraph 5 Terms, based on the School District’s historical water use under the Augmentation Plan and the improved infrastructure and operation of School Pond described herein. This Application does not seek a change of water rights for the Warrior Half Share, and nothing herein effects Applicants’ ability to use, in accordance with 80CW289 Decree and the Augmentation Plan, up to the full 6.225 acre feet of previously-quantified Warrior Half Share water at a rate and time as necessary to meet the School District’s uses and the County Uses. All other terms and conditions of the Augmentation Plan are unchanged. 5. Name and address of owner or reputed owner of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored: School Pond is located on land owned by the School District, whose address is listed in paragraph 1, above. WHEREFORE, the Applicants respectfully request the Court to enter a decree granting the claim set forth in this Application for approval of a third amendment of the Augmentation Plan. (8 pgs., 1 Exhibit)

WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED THE WATER RIGHTS CLAIMED BY THESE APPLICATIONS MAY AFFECT IN PRIORITY ANY WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT WITHIN THE TIME PROVIDED BY STATUTE OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or an amended application, may file with the Water Clerk, P. O. Box 2038, Greeley, CO 80632, a verified Statement of Opposition, setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions. Such Statement of Opposition must be filed by the last day of **JANUARY 2021** (forms available on www.courts.state.co.us or in the Clerk's office) and must be filed as an Original and include **\$192.00** filing fee. A copy of each Statement of Opposition must also be served upon the Applicant or Applicant's Attorney and an affidavit or certificate of such service of mailing shall be filed with the Water Clerk.