

Consent Agenda Item 1.b

March 15-16, 2022 Board Meeting
Case No. 21CW3081 (Water Division 2); Heath Mills

Summary of Water Court Application

Application for Determination of 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 2022 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 2 in the Arkansas River Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
04CW0080	Currant Creek	confl Mill Gulch	confl Cottonwood Creek	2 (4/1 - 10/31) 1.4 (11/1 - 3/31)	01/28/2004
95CW0231	Currant Creek	confl Cottonwood Creek	confl Tallahassee Creek	0.5 (11/1 - 3/31) 1.25 (4/1 - 10/31)	11/06/1995
95CW0232	Tallahassee Creek	confl South Tallahassee Creek	confl Arkansas River	1 (4/1 - 10/31) 0.5 (11/1 - 3/31)	11/06/1995

Potential for Injury

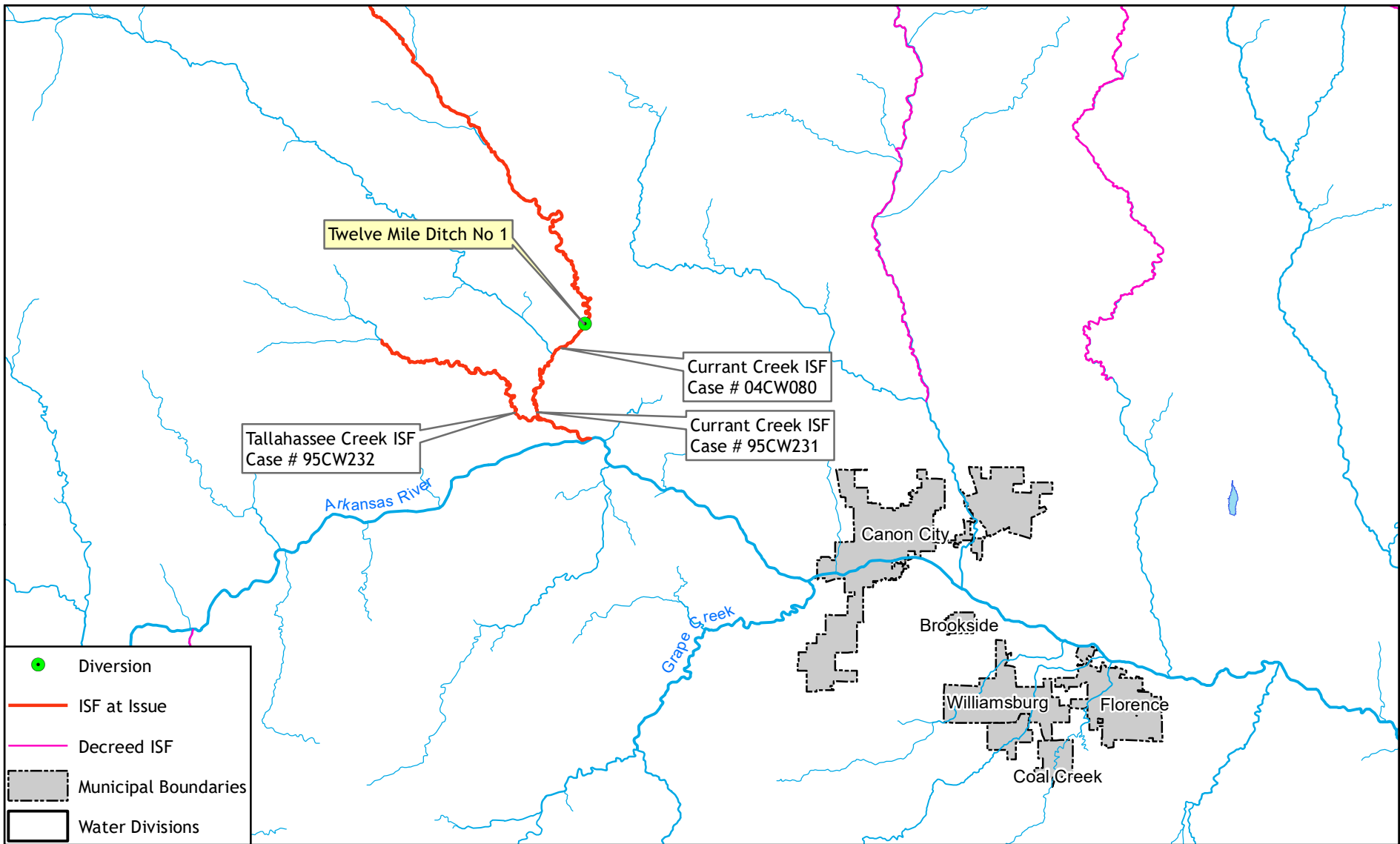
- This determination of water right could injure the CWCB's instream flow water rights if it results in an expansion in use beyond what was contemplated in the original decree.
- Terms and conditions should be included in the decree to ensure that the proposed decree will not injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by the Headwater Authority of the South Platte, Penrose Water District, the State and Division Engineers, and the City of Aurora, acting by and through its Utility Enterprise.

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.

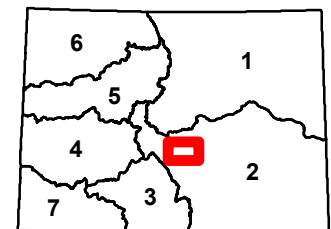


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting
 Consent Agenda Item 1.b Statement of Opposition
 Case No. 21CW3081 (Division 2)

Heath Mills
 0 2.5 5 10 Miles



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2021, INCLUDING FINAL ABANDONMENT LIST OF WATER RIGHTS IN WATER DIVISION 2 and Invitation to Join State Engineer's Substitute Water Supply Plan Notification List and/or The State Engineer's Produced Nontributary Ground Water Notification List (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us).

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, certain amendments and Notice of Final Abandonment List filed and/or ordered published during December 2021, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, and notice of Revised Abandonment List are as follows:

CASE NO. 2021CW3081; HEATH MILLS, 2866 Highway 9, Canon City, CO 81212

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Julianne M. Woldridge, MacDougall & Woldridge, P.C., P.O. Box 7273, Woodland Park, CO 80863, (719) 520-9288)

Application for Determination of Surface Water Right

FREMONT COUNTY

2. Name of Structure: Twelve Mile Ditch No. 1. **3. Location of Structure and point of diversion:** NW1/4SW1/4 of Section 30, Township 17 South, Range 71 West, 6th P.M., Fremont County, CO. The approximate UTM coordinates are believed to be Easting 466571.0 and Northing 4265154.0, Zone 13. **4. Source:** Currant Creek. **5. A. Date of Appropriation:** December 31, 1873. B. How appropriation was initiated: By construction of the ditch and placement of the water to beneficial use. The water right is the subject of the general adjudication decree entered by the District Court, Fremont County on February 3, 1894 wherein no specific appropriation date was identified. Testimony in that proceeding reflects that the water had been used at least as early as 1873. C. Date water applied to beneficial use: December 31, 1873. **6. Amount claimed:** All available flows subject to the rotation schedule and timing established in the general adjudication entered February 3, 1894, absolute. **7. Uses:** Irrigation in the SW1/4 SW1/4 and the W1/2 SW1/4 of Section 30 and the NW1/4 NW1/4 of Section 31, T.17S., R.71W., 6th P.M. See general location map attached to the application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **8. Name and address of owner of land on which the diversion structure was constructed:** Gordon L. Abbas and Cynthia E. Stratton-Abbas, 19209 525th St., Centerville, IA 52544-8700. **9. Remarks:** Applicant seeks confirmation of a determination of the water right decreed to the Twelve Mile Ditch No. 1 in the general adjudication entered by the Fremont District Court on February 3, 1894, which decree identified this water right but did not specify the appropriation date or

Attachment
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location of the point of diversion. That decree numbered the various ditches and canals in District No. 12 “according to the dates of their respective and several constructions” and assigned Ditch No. 402 to the Twelve Mile Ditch No. 1. That decree did not assign an appropriation number to the Twelve Mile Ditch No. 1 water right, instead stating that water of Currant Creek “from its source down to the North line of Section twenty-nine, Tp 16 N. R. 72 West, shall belong to and be divided between the following persons and lands...”, including that for the Twelve Mile Ditch No. 1, and described a rotation schedule based on a rotation agreement introduced into evidence in that proceeding. That decree states further with respect to the ditches on Currant Creek that “each of them, are subject to any, and all, other ditches and priorities with which they, or any of them may interfere.” A copy of the rotation agreement and testimony related to the Twelve Mile Ditch No. 1 is attached to the Application as Exhibit B. Applicant seeks to confirm a priority date for this water right of December 31, 1873 as adjudged and decreed in the February 3, 1894 general adjudication without being made junior by reason of C.R.S. § 37-92-306, subject to the terms and conditions in that February 3, 1894 general adjudication including the rotation schedule for other water rights on Currant Creek described therein for so long as such rotation schedule is legally effective. *See Southern Ute Indian Tribe v. King Consolidated Ditch Co.*, 250 P.3d 1226 (Colo. 2011). **Notice pursuant to C.R.C.P. 89: The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected water rights must appear to object and protest within the time provided by statute, or be forever barred.** In the alternative, should the Court determine that no water right was determined in that proceeding, Applicant seeks determination of the water right as described in the Application.

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 any party who wishes to oppose an application, or application as amended, may file with the Water Clerk 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 February 2022, (forms available at Clerk’s office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

YOU ARE FURTHER NOTIFIED that any person who wishes to protest the inclusion of any water rights on the final decennial abandonment list shall file a written protest with the Water Clerk for the Division 2 Water Court and provide a copy to the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2021) not later than June 30, 2022. The fee for filing such a protest with the Water Clerk is forty-five dollars (\$45.00). The protest shall set forth in detail the factual and legal basis therefor. A form for such a protest ([JDF 304W](#)) is available on the Water Court website.

Witness my hand and the seal of this Court this 19th day of January 2022.



Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749

(Court seal)
Published:
