

Consent Agenda Item 1.b

July 20-21, 2022 Board Meeting

Case No. 22CW3026 (Water Division 2); Sylvan Lakes Metropolitan District

Summary of Water Court Application

Amended Application for Approval of 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 June 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
W-4643 (1977)	West Tennessee Creek	confl NF Tennessee Creek	confl Tennessee Creek	5 (1/1 - 12/31)	11/15/1977
82CW0143	Tennessee Creek	confl W Tennessee Creek	confl Longs Gulch	5 (1/1 - 12/31)	06/03/1982
98CW0145	Tennessee Creek	north Section Line	confl St Kevin Gulch	4.5 (10/15 - 5/14) 19 (5/15 - 7/31) 7 (8/1 - 10/14)	12/09/1998
98CW0146	Tennessee Creek	confl St Kevin Gulch	confl E Fk Arkansas River	19 (5/15 - 7/31) 9 (8/1 - 10/14) 6 (10/15 - 5/14)	12/09/1998
98CW0151	Tennessee Creek	confl Longs Gulch	north Section Line	17 (5/15 - 7/31) 5.5 (8/1 - 10/14) 3 (10/15 - 5/14)	12/09/1998

Potential for Injury

- Applicant's proposed augmentation plan may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights. Terms and conditions should be included in any decree entered in this case to ensure that the decreed augmentation plan can be administered without causing injury to CWCB's instream flow water rights.

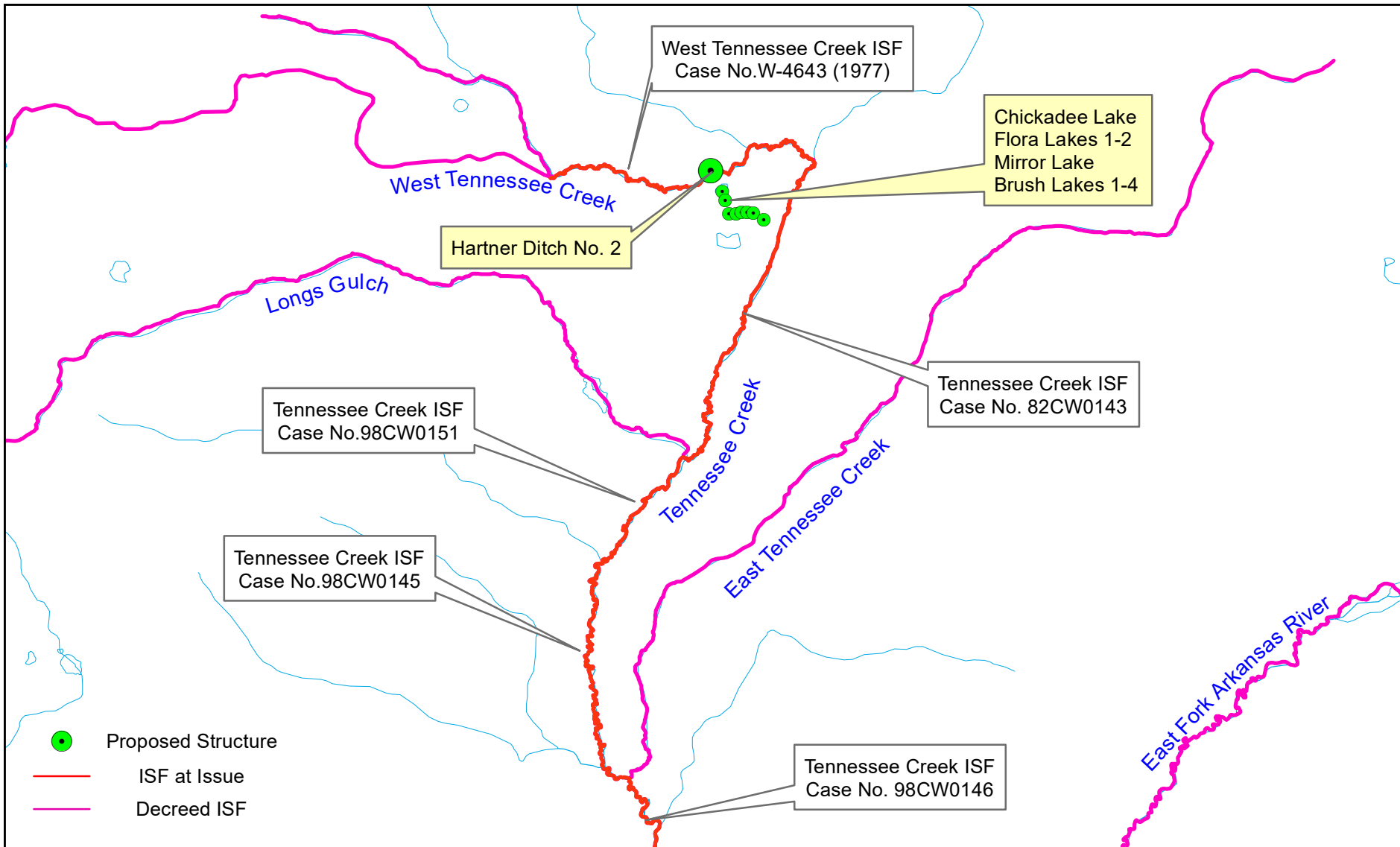
- Any administrative exchange or depleted reach of stream that may occur by operation of Applicant's proposed augmentation plan should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.

Other Objectors

Statements of Opposition were also filed by Mount Massive Lakes, LLC; Board of Water Works of Pueblo, Colorado; and the State and Division Engineers.

Attorney Representing CWCB

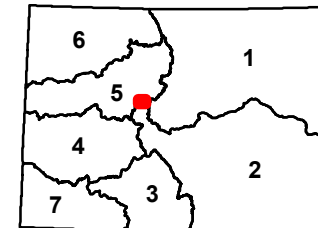
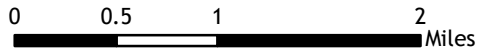
Rebecca L. Crotty, Assistant Attorney General, is assigned to this case and can be contacted at rebecca.crotty@coag.gov, or 720-508-6260.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

July 20-21, 2022 CWCB Board Meeting
 Consent Agenda Item 1.b Statement of Opposition
 Case No. 22CW3026 (Water Div 2)
 Sylvan Lakes Metropolitan District



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 2022.

(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, Protests to Final Revised Abandonment List, and certain amendments filed and/or ordered published during April 2022, 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, are as follows:

CASE NO. 2022CW3026; SYLVAN LAKES METROPOLITAN DISTRICT, PO Box 156

Leadville, Colorado 80461-0156 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr, #39394, Steven T. Monson, #11329, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Amended Application for Approval of Plan for Augmentation

LAKE, CHAFFEE AND PITKIN COUNTIES

II. Background and Summary of Application. Applicant is a Title 32 Metropolitan District. Applicant owns and controls nine lakes that serve as aesthetic, recreational, fish propagation, wildlife habitat, and fire suppression reservoirs within the boundaries of the metropolitan district. Applicant is seeking storage water rights and an augmentation plan to replace the depletions of the reservoirs caused by evaporation. **III. Plan for Augmentation.**

A. Property Description. Applicant's boundaries consist of the NW1/4 of the NE1/4, that portion of the NE1/4 of the NE1/4 lying west of US Highway 24, the SW1/4 of the NE1/4, the SE1/4 of the NE1/4, and the NW1/4 of the SE1/4, all lying within Section 21, Township 8 South, Range 80 West of the 6th P.M., Lake County, Colorado

("Applicant's Property"). See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

B. Structures to be Augmented. The structures to be augmented are nine lakes located on the Applicant's Property all within the NE1/4 of Section 21, Township 8 South, Range 80 West of the 6th P.M., and all are served by Hartner Ditch No. 2, as described below, and as shown on the attached **Exhibit A**

("Lakes"). The Lakes are known as follows: 1. Chickadee Lake, UTM Zone 13, NAD83, Easting: 384876, Northing: 4355807. 2. Flora Lake No. 1, UTM Zone 13, NAD83, Easting: 384899, Northing: 4355642. 3. Flora Lake No. 2, UTM Zone 13, NAD83, Easting: 384925, Northing: 4355534. 4. Mirror Lake, UTM Zone 13, NAD83, Easting: 384963, Northing: 4355408. 5. Brush Lake No. 1, UTM Zone 13, NAD83, Easting: 384876, Northing: 4355807. 6. Brush Lake No. 2, UTM Zone 13, NAD83, Easting: 385042, Northing:

**Attachment
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4355403. 7. Brush Lake No. 3, UTM Zone 13, NAD83, Easting: 385104, Northing: 4355418. 8. Brush Lake No. 4, UTM Zone 13, NAD83, Easting: 385155, Northing: 4355399. 9. Brush Lake No. 5, UTM Zone 13, NAD83, Easting: 385229, Northing: 4355396. C. Volume. Total volume of all Lakes amounts to 20 acre-feet. D. Source. The Lakes are filled by diversions from West Tennessee Creek, tributary to Tennessee Creek, tributary to the Arkansas River through the Hartner Ditch No. 2, as described below. E. Uses. The Lakes are used for piscatorial, recreation, wildlife habitat, aesthetic, and fire suppression purposes. F. Water Right. Applicant is the owner of the Hartner Ditch No. 2 that is used to fill the Lakes from West Tennessee Creek. The Hartner Ditch No. 2 water right was decreed in Case No. CA3053, District Court for Chaffee County on January 18, 1932. Hartner Ditch No. 2 is located in the NW1/4 of the NE1/4 of Section 21, Township 8 South, Range 80 West of the 6th P.M. and is decreed for 2.98 cfs for the purposes of fish culture and propagation. G. Water Rights to be Used for Augmentation. 1. Mount Massive Lakes/Homestake Trout Club Water. Applicant has entered into a lease with Mount Massive Lakes, Inc. and Home Stake Trout Club, Inc. (“MML/HSTC”) for 22.36 annual acre-feet of fully consumable water. Such water is available according to the following schedule:

Month	Acre-Feet
May	3.18
June	5.78
July	4.92
August	4.43
September	3.18
October	0.87
Total	22.36

MML/HSTC adjudicated a change of water right of the Noland Ditch water right in Case No. 87CW73, District Court, Water Division 2 (“87CW73 Decree”). The Noland Ditch water rights were originally adjudicated in Case Nos. CA1127 and CA2749, former Water District 11, Water Division 2 for irrigation purposes. Specifically, the Noland Ditch was decreed as follows: Case No. CA1127, former Water District No. 11, Water Division 2, decree entered in the District Court of Chaffee County, Colorado on June 19, 1890: i. (CA1127) Noland Ditch, Priority No. 19, 3.6 cfs for irrigation, appropriation date of November 15, 1867, later reduced to 2.8 cfs; ii. Noland Ditch First Enlargement, Priority No. 92, 2.4 cfs for irrigation, appropriation date of May 31, 1881, later reduced to 1.87 cfs; iii. Noland Ditch Second Enlargement, Priority No. 133, 0.33 cfs for irrigation, appropriation date of May 31, 1883; and Case No. CA2749, former Water District No. 11, Water Division 2, decree entered in the District Court of Chaffee County, Colorado on July 19, 1923: iv. Noland Ditch Third Enlargement, 8.0 cfs for irrigation, appropriation date of June 21, 1890. The 87CW73 Decree awarded 238.6 acre-feet of consumptive use water to MML/HSTC from the Noland Ditch, including 22.36 acre-feet of unassigned consumptive use water. The point of delivery for replacement water from MML/HSTC will be at the confluence of the Arkansas River and the South Arkansas River. 2. Twin Lakes Water. Applicant also leases 4.1 shares of Twin Lakes Reservoir and Canal Company stock from residents within Sylvan Lakes Metropolitan District. These shares provide approximately 2.87 acre-feet of replacement water. The native portion of the Twin Lakes shares will not be used for replacement purposes. The Twin Lakes shares represent a

pro rata interest in native Arkansas River diversions and the Independence Pass transmountain diversion system which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in the Twin Lakes Reservoirs in southern Lake County, Colorado. Each Twin Lakes share consists of direct flow and storage rights which are available for 100 percent consumptive use and reuse and is available for augmentation. The water rights producing the *pro rata* interest of the Applicant are described as follows: i. Colorado River Water Rights. a. *Decree*: 1. Case No. 3082, District Court, Garfield County, August 25, 1936. 2. Case No. W-1901, District Court, Water Division 5, May 12, 1976. a. *Priority*: August 23, 1930, Priority No. 431. b. *Source*: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above referenced Decrees. c. *Use*: Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal and all beneficial uses. d. *Amount*: Direct flow amount for diversions through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre feet, and other limitations set forth in the decrees. ii. Arkansas River Water Rights. a. *Decree*: 1. Original Decree, Case No. 2346, District Court, Chaffee County, July 14, 1913. 2. Modified, Case No. W-3965, District Court, Water Division 2, April 19, 1974. a. *Priorities*: December 15, 1896, Priority No. 3, and March 25, 1897, Priority No. 4. b. *Source*: Lake Creek and its tributaries tributary to the Arkansas River. c. *Use*: Storage for irrigation, domestic, commercial, industrial and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas River. d. *Amount*: 54,452 acre-feet (20,645.3 acre-feet -Priority No. 3; 33,806.7 acre-feet - Priority No. 4). ii. Point of Replacement. The point of delivery for replacement water from Twin Lakes Reservoir and Canal Company will be at the confluence of Lake Creek and the Arkansas River. 2. Pueblo Board of Water Works. Pueblo Board of Water Works ("PBWW") leases direct source and augmentation water from its water rights to water users. Applicant intends to lease such water rights for augmentation hereunder. Water available for lease by PBWW includes PBWW's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which PBWW may deliver water, the sources of which are at the option of PBWW, as long as they are legally available for their requested purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West, 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, 6th P.M. and Sections 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, 6th P.M., in Lake County), Clear Creek Reservoir (located in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. H. Statement of Plan for Augmentation. Applicant seeks to augment stream depletions associated with diversions through Hartner Ditch No. 2 to fill and cover evaporative losses from the Lakes. Gross annual evaporative depletions from the Lakes have been

determined to be 14.52 acre-feet, the total of which is broken down into monthly amounts as follows:

Month	Acre-Feet
January	0
February	0
March	0
April	0
May	2.4
June	2.98
July	3.08
August	2.5
September	2.12
October	1.44
November	0
December	0

The Lakes have a total surface area of 6.69 acres. The Lakes are naturally occurring lakes that were enlarged over time to their current sizes. Applicant intends to take credit against the above listed evaporative losses and any fills for the portions of the Lakes that are deemed naturally occurring. 1. Remarks. Additional remarks are as follows: 1. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of evaporative depletions in order to protect other water rights. 2. Depletions will be considered to be out-of-priority during all times when there is a valid call for water downstream of the Hartner Ditch No. 2 headgate from a water right that is senior to the Hartner Ditch No. 2 water right. Once the Lakes are full and spilling, the amount of out-of-priority replacement will be the evaporative depletions as set forth above. 3. The Applicant requests a finding that the vested water rights of others will not be materially injured by the fill and evaporative depletions as long as those depletions are augmented as set forth herein. 4. The Lakes shall be metered/measured/monitored as reasonably required by the State and Division Engineers. The Applicant shall provide accounting to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan for augmentation. 5. The transit loss from the delivery point to the point of augmentation will be assessed on the delivered water as determined by the Division Engineer's Office. 6. As required by the lease with MML/HSTC, diversions by Applicant from West Tennessee Creek by Hartner Ditch No. 2 shall not decrease the flow of Tennessee Creek to an amount that is less than the existing decreed minimum instream flow right of the CWCB. 7. If any of the replacement sources described above are exhausted at any time and the Hartner Ditch No. 2 is called out, Applicant will shut off the Hartner Ditch No. 2 headgate until such sources are once again available and allow the lake levels to drop as a result of the suffered evaporation. 8. If there is an intervening call that is not being fully satisfied between the diversion point of Hartner Ditch No. 2 and the point of replacement for the above listed augmentation sources, Applicant will decrease diversion or shut off the Hartner Ditch No. 2 headgate until such calling right is fully satisfied and allow the lake levels to drop as a result of the suffered evaporation. 9. Pursuant to C.R.S. § 37-92-305(8), Applicant will set forth procedures for the inclusion of alternative augmentation sources.

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 June 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). YOU ARE HEREBY NOTIFIED that any party who wishes to support or oppose a protest to the final revised abandonment list may file with the Division 2 Water Clerk an entry of appearance, under Water Court Rule 12(d), and file a completed JDF 320W - Entry of Appearance in Protest to Final Abandonment List, such entry of appearance must be filed by August 31, 2022 (forms available at Clerk's office or at www.courts.state.co.us). A copy of such entry of appearance must also be served upon the Opposer and the applicant's attorney and an affidavit or certificate of such service shall be filed with the Division 2 Water Clerk, as prescribed by Rule 5, CRCP. The foregoing are resumes and the entire application, protest, 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.

Witness my hand and the seal of
this Court this 13TH day of May
2022.

District Court, Water Div. 2
Pueblo Judicial Building


Michele M. Santistevan, Clerk



501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749

(Court seal)
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