

Consent Agenda Item 1.a

January 23-24, 2023 Board Meeting

Case No. 22CW3042 (Water Division 3); Forbes Park Land Owners Association

Summary of Water Court Application

Application for Absolute Underground Water Rights and Approval of Augmentation Plan.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in December 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 right in Water Division 3 in the Alamosa-Trinchera River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
82CW0230	Sangre de Cristo Creek	Headwaters in vicinity of lat. 37 deg. 36’56” N., long. 105 deg. 11’35” W.in vicinity	confl Ute Creek at lat. 37 deg. 24’20” N., long 105 deg. 29’54” W.	2 (1/1 - 12/31)	10/07/1982

Potential for Injury

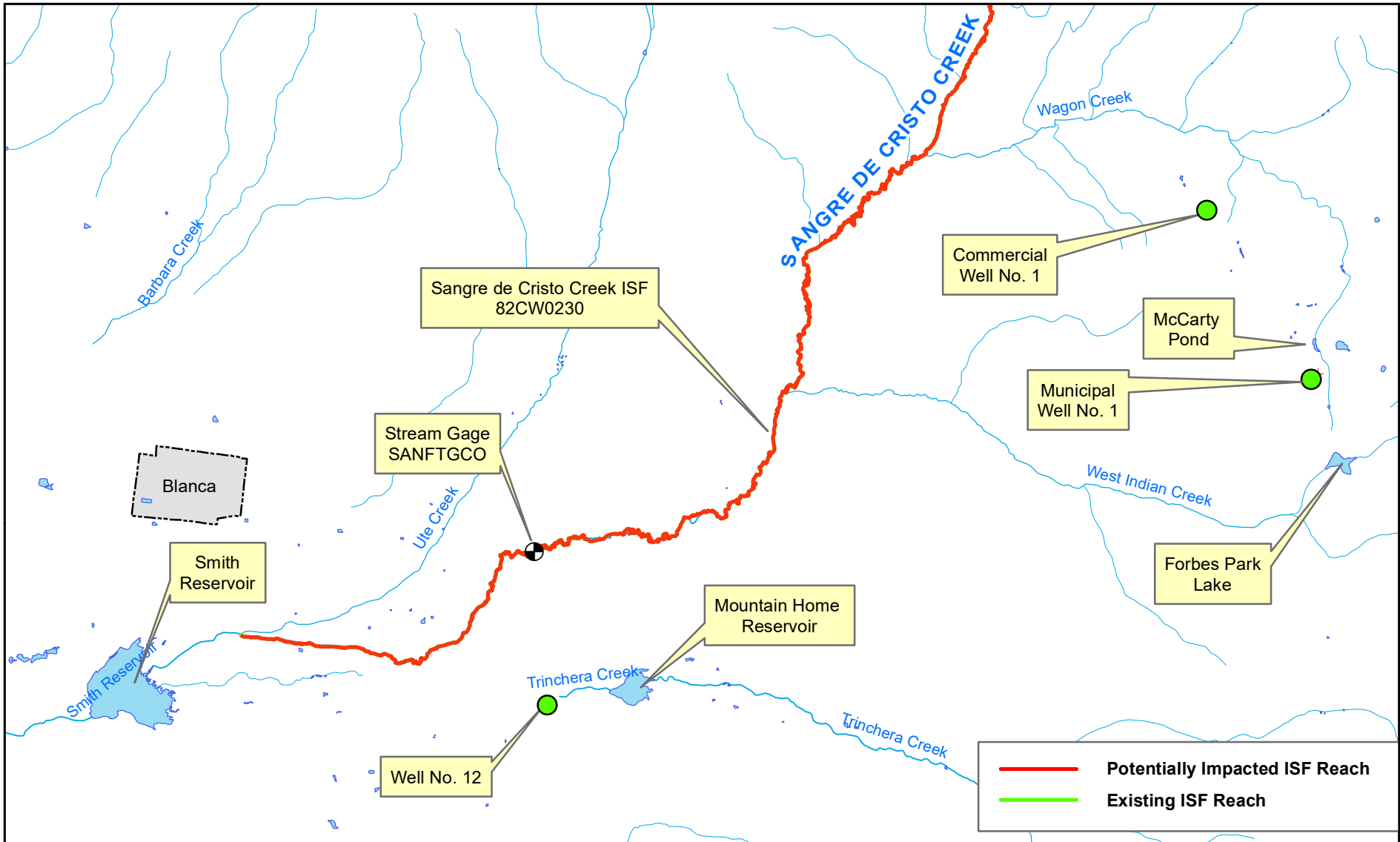
- The proposed “water exchange project or substitution” should be defined clearly with a reference to any intervening instream flow water right so that the CWCB’s instream flow water right will not be injured.
- The proposed plan for augmentation may not replace depletions in the proper time, place, and amount, which could injure the CWCB’s instream flow water rights.

Other Objectors

Statements of Opposition were also filed by the State and Division Engineers, and Trinchera Irrigation Company.

Attorney Representing CWCB

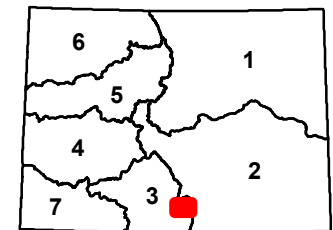
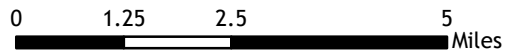
Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

January 23-24, 2023 CWCB Board Meeting
 Consent Agenda Item 1.a
 Statement of Opposition
 Case No. 22CW3042 (Water Division 3)
 Forbes Park Land Owners Association



**DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS FILED IN
WATER DIVISION 3.**

Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in Water Division 3, containing notice of applications and certain amendments filed in the office of the Water Clerk during the month of October 2022 for each county affected.

22CW3042: Forbes Park Land Owners Association, 100 Forbes Park Rd, Fort Garland, CO 81133. Direct all correspondence to co-counsel for Applicant: Mirko L. Kruse, Kruse Law PLLC, 134 F Street, Suite 203, Salida, CO 81201, mkruse@kruselawpllc.com and Kendall K. Burgemeister, Law of the Rockies, 525 North Main Street, Gunnison, CO 81230, kburgemeister@lawoftherockies.com. **APPLICATION FOR ABSOLUTE UNDERGROUND WATER RIGHTS, AND APPROVAL OF PLAN FOR AUGMENTATION INCLUDING WATER EXCHANGE PROJECT OR SUBSTITUTION. Claim for Absolute Underground Water Rights.** 1. FPLOA Municipal Well No. 1; Permit No. 82268-F; WDID 3505755. A. Location: NE 1/4 of the SW 1/4, Section 2, Township 30 South, Range 70 West, 6th P.M., 1,520 feet from the South section line and 1,823 feet from the West section line (UTM: 483034 E 4146556N; Zone 13), as shown on the map on **Exhibit A.** B. Source: Groundwater, tributary to Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. C. Date of appropriation: October 19, 2017. D. How appropriation was initiated: The filing of a well permit application for a monitoring well for FPLOA Municipal Well No. 1. E. Date water applied to beneficial use: June 26, 2019, based on issuance of permit 82268-F, installation of a pump, approval of an SWSP, and operating the well in accordance with the SWSP. F. Amount: 50 g.p.m., absolute. Any amounts or uses not found absolute are claimed conditional. G. Uses: Municipal purposes within the Forbes Park subdivision, including fire station building uses, equipment and truck washing, irrigation in greenhouses, animal watering, car washing, filling recreational vehicles and campers, sprayer equipment for pest control, community fundraisers, filling cisterns at residential lots, irrigation of trees planted for reforestation following wildfires, and emergency firefighting purposes. H. Depth: 250 feet. 2. FPLOA Commercial Well No. 1; Permit No. 284700 A. Location: NE 1/4 of the NW 1/4, Section 28, Township 29 South, Range 70 West, 6th P.M., 735 feet from the North section line and 2,434 feet from the West section line (UTM: 480054 E 4150865 N; Zone 13), as shown on the map on **Exhibit A.** B. Source: Groundwater, tributary to Wagon Creek, tributary to the Sangre De Cristo Creek, tributary to Trinchera Creek. C. Date of appropriation: February 18, 1999. D. How appropriation was initiated: The filing of a well permit application for FPLOA Commercial Well No. 1 (Permit No. 215618). E. Date water applied to beneficial use: July 1, 1999. F. Amount: 50 g.p.m., absolute. Any amounts or uses not found absolute are claimed conditional. G. Uses: Municipal purposes within the Forbes Park subdivision, including drinking and sanitary facilities within the Association's assembly hall, filling recreational vehicles and campers, equipment and truck washing, irrigation in greenhouses, animal watering, car washing, sprayer equipment for pest control, community fundraisers, filling cisterns at residential lots, irrigation of trees planted for reforestation following wildfires, and emergency firefighting purposes. H. Depth: 130 feet. **Claim for Approval of Plan for Augmentation Including**

Replacement by Exchange Project or Substitution. 3. Names of structures to be augmented: FPLOA Municipal Well No. 1 and FPLOA Commercial Well No. 1 (together, “the Subject Wells”), as described in paragraphs 3 & 4 above. 4. Water rights to be used for augmentation: The Association owns Case No. W-572 Well No. 12 (“Well No. 12”), which was changed to be used as a replacement source for the plan for augmentation decreed in Case No. W-3312. That augmentation plan replaces out-of-priority depletions from domestic wells constructed within the Forbes Park subdivision. The Association intends to use Well No. 12 to similarly replace out-of-priority depletions from the Subject Wells. The Association will also utilize McCarty Pond and Forbes Park Lake to make replacements to Sangre de Cristo Creek when necessary. Well No. 12, McCarty Pond, and Forbes Park Lake are further described as follows: A. Well No. 12; Permit No. 14569-R; WDID 3505088. i. Decrees: Original Decree, Case No. W-572, Division No. 3, dated June 13, 1974; Augmentation Decree, Case No. W-3312, Division No. 3, dated April 3, 1975. ii. Location: NW 1/4 of the SW 1/4, Section 35, Township 30 South, Range 72 West, 6th P.M., (UTM: 463415 E 4138445 N; Zone 13). iii. Source: Groundwater tributary to Trinchera Creek. iv. Date of appropriation: March 31, 1956. v. Amount: 1,350 gpm; being 6 acre-feet per twenty-four hours. vi. Uses: Irrigation and augmentation. The irrigation uses of Well No. 12 have completely ceased. vii. Depth: 496 feet. B. McCarty Pond. i. Decrees: McCarty Pond is currently unadjudicated. The Association intends to file an application to adjudicate a water right for McCarty Pond, which will include augmentation and replacement uses. ii. Location: In the NW 1/4, Section 2, Township 30 South, Range 70 West, 6th P.M. The dam intersects the stream channel at approximately 482940 E, 4147432 N, UTM 13S, NAD 83. iii. Source: McCarty Pond is an on-channel pond sourced from Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. iv. Surface Area: 4.0 acres. v. Amount: Approximately 10.84 acre-feet of total storage volume, and 10.83 acre-feet of live-storage. vi. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. C. Forbes Park Lake. i. Decrees: Forbes Park Lake is currently unadjudicated. The Association intends to file an application to adjudicate a water right for Forbes Park Lake, which will include augmentation and replacement uses. ii. Location: In portions of the South 1/2 of Section 11 and the North 1/2 of Section 14, Township 30 South, Range 70 West, 6th P.M. The dam intersects the stream channel at approximately 483226E, 4144168N, UTM Zone 13, NAD 83. iii. Source: Forbes Park Lake is an on-channel pond sourced from the North Fork of West Indian Creek, tributary to West Indian Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek. iv. Surface Area: Approximately 48 acres. v. Amount: Approximately 214.4 acre-feet of total storage volume, and 214.4 acre-feet of live-storage. vi. Uses: Aesthetic, fish & wildlife, fire suppression, and augmentation and replacement purposes. 5. Complete statement of plan for augmentation: The Association will replace all out-of-priority depletions caused by withdrawals from the Subject Wells. The proposed methodology for determining the quantity, timing, and location of depletions, and the methodology for replacing out of priority depletions, are set forth below: A. Uses, diversions, and consumptive use ratios. The combined annual diversion and consumptive use from the Subject Wells is currently estimated to be only 0.62 acre-feet and 0.50 acre-feet, respectively. Total combined consumptive use from the Subject Wells are anticipated to grow in the future up to a maximum of 9.89 acre-feet annually as the Forbes Park Subdivision progresses towards full build out, and total combined diversions will be limited based on the

consumptive use calculations described in paragraph 5.B, below. The potential uses of the Subject Wells for various indoor and outdoor purposes and their presumptive consumptive use ratios are listed in **Exhibit B. B. Calculation of consumptive use.** Diversions from the Subject Wells will be metered and recorded. Consumptive use will be calculated monthly. If the uses of water with a consumptive use ratio less than 100% are separately metered, the consumptive use of such uses shall be determined by multiplying the measured diversions by the consumptive use ratio listed in **Exhibit B.** Uses of water that have a 100% consumptive use ratio and uses that are not separately metered shall be determined to consume 100% of the measured diversion. C. **Location of depletions.** Depletions will impact Wagon Creek, tributary to Sangre De Cristo Creek, tributary to Trinchera Creek, at points of depletion shown on **Exhibit A. D. Timing of depletions.** The unit response factors and Glover parameters used to calculate monthly lagged depletions from the Subject Wells are shown on **Exhibit C. E. Replacement of depletions.** Out-of-priority stream depletions occurring when the controlling call is owned by Trinchera Irrigation Company will be replaced from Well No. 12 in a similar manner that domestic wells are augmented under the Decree in Case No. W-3312. If the calling water right cannot be satisfied with pumping from Well No. 12, the Association will make releases above the calling water right from McCarty Pond or Forbes Park Lake, such water having been previously stored pursuant to the water exchange project described below. Out of priority depletions from Well No. 12 will in turn be remedied by participation in the Groundwater Management Plan of the Groundwater Management Subdistrict of the Trinchera Water Conservancy District (“Trinchera Subdistrict”) via a Water Allotment Contract with the Trinchera Subdistrict. i. **Case No. W-3312.** Well No. 12 was changed to a replacement source for the plan for augmentation decreed in Case No. W-3312. That augmentation plan replaces out-of-priority depletions from domestic wells constructed within the Forbes Park subdivision. ii. **Excess replacement supply.** While the W-3312 Decree contemplated augmenting domestic wells for 3,800 single family residential lots, the final plat of Forbes Park subdivision only included 3,346 lots. The 454 lots that were not platted generates 9.89 acre-feet per year of augmentation contemplated by the W-3312 Decree that is no longer required for domestic use in Forbes Park. Moreover, residential lots continue to be consolidated, resulting in even fewer residential units at full build-out. Finally, after approximately 40 years of existence, the subdivision is at approximately 10% build-out. The Association currently is only required to deliver 8.2404 acre-feet per year from Well No. 12 to the Trinchera Irrigation Company to cover 378 developed lots. Therefore, as much as 74.75 acre-feet of the 83 acre-feet of historical consumptive use from Well No. 12 is currently not required and is available for use under this plan. Long-term, at least 9.89 acre-feet per year will be available. iii. **Replacement of out of priority depletions to Trinchera Irrigation Company.** Out-of-priority depletions, determined pursuant to 5.D., above, accruing to the stream during a time that the controlling call is owned by Trinchera Irrigation Company will be replaced by pumping an equivalent quantity of water and delivering the same to Trinchera Irrigation Company. Reporting of the consumptive use from the Subject Wells and deliveries from Well No. 12 will be made monthly or at times as required by the Division Engineer. iv. **Replacement from McCarty Pond and/or Forbes Park Lake.** If the calling water right is not owned by the Trinchera Irrigation Company and is located on Sangre De Cristo Creek or Wagon Creek above Smith Reservoir, the Association will release water from McCarty Pond or Forbes Park Lake to replace out of priority depletions as necessary to provide

replacement water above the calling water right. E. Replacement by water exchange project or substitution. In connection with the plan for augmentation, Applicant requests an appropriative right of exchange for the water exchange project or substitution as follows: i. Downstream termini: The downstream termini of the exchange will be Smith Reservoir and other points upstream of Smith Reservoir from which Trinchera Irrigation Company may divert water. Smith Reservoir is located in parts and portions of Sections 26, 27, 33, 34, and 35 of Township 30 South, Range 73 West of the 6th P.M. and in parts or portions of Sections 2 and 3 in Township 31 South, Range 73 West, 6th P.M. ii. Source of Replacement: Water pumped from Well No. 12 and delivered to Trinchera Irrigation Company. iii. Upstream termini: a. McCarty Pond, as described in paragraph 4.B above. b. Forbes Park Lake, as described paragraph 4.C above. c. The uppermost points on Wagon Creek, tributary to Sangre De Cristo Creek, affected by depletions from the FPLOA Municipal Well No. 1 and FPLOA Commercial Well No. 1, as shown on the map in **Exhibit A** and located at points in the NW 1/4 of the SE 1/4, Section 2, Township 30 South, Range 70 West, 6th P.M. (483301E, 4146638N, UTM Zone 13, NAD 83); and SE 1/4 of the SE 1/4, Section 21, Township 29 South, Range 70 West, 6th P.M. (480751E, 4151290N, UTM Zone 13, NAD 83), respectively. iv. Appropriation date: October 21, 2022. v. How appropriation was initiated: By the filing of this application. vi. Annual Volume: 9.89 acre-feet. vii. Maximum rate of exchange: 3.0 cfs (1,350 gpm). 5. Change of water rights: The water rights associated with Well No. 12 were already changed to be used for augmentation purposes in Case No. W-3312. If a change is still necessary to implement this augmentation plan however, Applicant requests such a change of the water rights associated with Well No. 12 only to the extent necessary to allow augmentation of the Subject Wells as described above. No other change is requested and the Association does not intend by this Application to otherwise affect or change the augmentation plan decreed in Case No. W-3312. 6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new or existing 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: Applicant.

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 notified that you have until the last day of December 2022, 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 or a protest to the requested correction. A copy of such a statement of opposition or protest must also be served upon the Applicant or the Applicant's attorney and an affidavit or certificate of such service must be filed with the Water Clerk. The filing fee for the Statement of Opposition is \$192.00. Forms may be obtained from the Water Clerk's Office or our website at www.courts.state.co.us. Jennifer Pacheco, Water Clerk, Water Division 3, 8955 Independence Way, Alamosa, CO 81101.