

### Summary of Water Court Application

Applicant requests two direct flow surface rights and one groundwater pond right. One direct flow right of 0.5 cfs is for freshening flows for the groundwater pond right. The other direct flow right of 2.0 cfs is for "stockwatering, wildlife watering, drainage, flood control and aesthetic" uses.

### Staff Recommendation

Staff requests ratification of a Motion to Intervene and Statement of Opposition filed to protect CWCB's instream flow water rights. It was filed on the Monday following the deadline for filing Statements of Opposition, thus a Motion to Intervene was required.

### CWCB Instream Flow Water Rights

The CWCB holds the following instream flow water right(s) that could be injured by this application:

<b>CWCB Case No.</b>	<b>Stream</b>	<b>Upper Terminus</b>	<b>Lower Terminus</b>	<b>Rate cfs</b>	<b>Timing</b>	<b>Approp. Date</b>	<b>Watershed</b>
5-77W3652A	Marvine Creek	confl. W Marvine Creek	confl. North Fork White River	40	1/1 -12/31	11/15/1977	Upper White
5-77W3652H	North Fork White River	confl. Marvine Creek	confl. South Fork White River	120	1/1-12/31	11/15/1977	Upper White
5-78W3704	North Fork White River	confl. Ripple Creek	confl. Marvine Creek	70	1/1– 12/31	1/19/1978	Upper White

### Potential for Injury

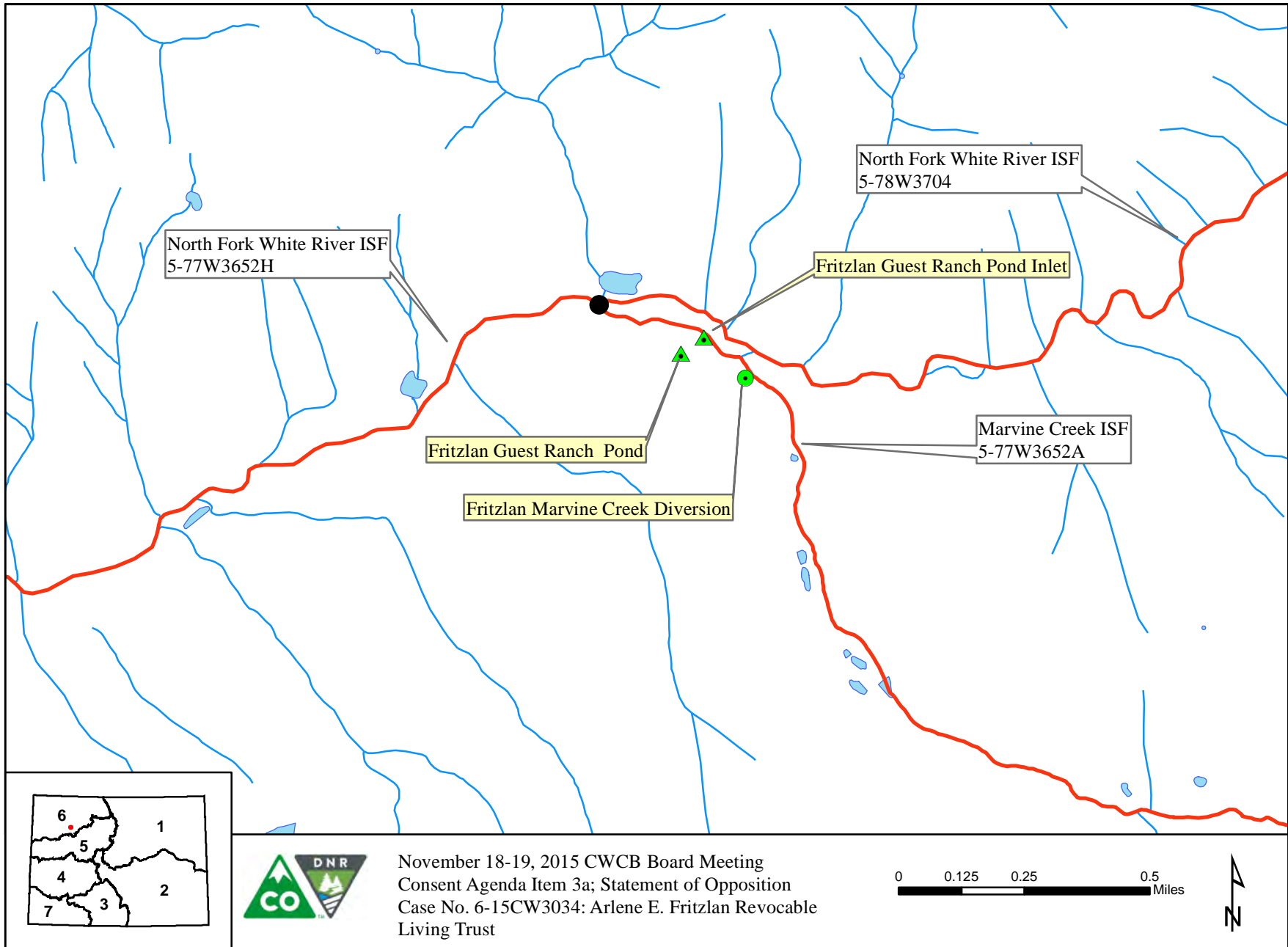
- The proposed flow-through water right could injure the CWCB's instream flow water right because it is fully depletive to a segment of the intervening instream flow.
- Applicant's claim for diversions for flow-through rights might not be valid given the recent ruling in *St. Jude's Co. v. Roaring Fork Club, L.L.C.*, 2015CO51, 351 P.3d 442 (Colo. 2015).

### Other Objectors

A Statement of Opposition was filed by Lynn K. Whiteman Family Trust and Karen L. Benner.

### Attorney

The Attorney assigned to this case is Susan J. Schneider, who can be contacted at [susan.schneider@state.co.us](mailto:susan.schneider@state.co.us), or 720-508-6311.



November 18-19, 2015 CWCB Board Meeting  
Consent Agenda Item 3a; Statement of Opposition  
Case No. 6-15CW3034: Arlene E. Fritzlan Revocable  
Living Trust

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Miles

