

**Consent Agenda Item 1.p**

March 11-12, 2020 Board Meeting

Case No. 19CW3035 (Water Division 6); Harvey and Seaton Cattle Co., LLC

**Summary of Water Court Application**

Application for approval of plan for augmentation including change of water rights.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2020 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 5 in the Upper White River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-3652C(1977) (Div. 5)	White River	confl NF & SF White River	confl Piceance Creek	200 (1/1 - 12/31)	11/15/1977

**Potential for Injury**

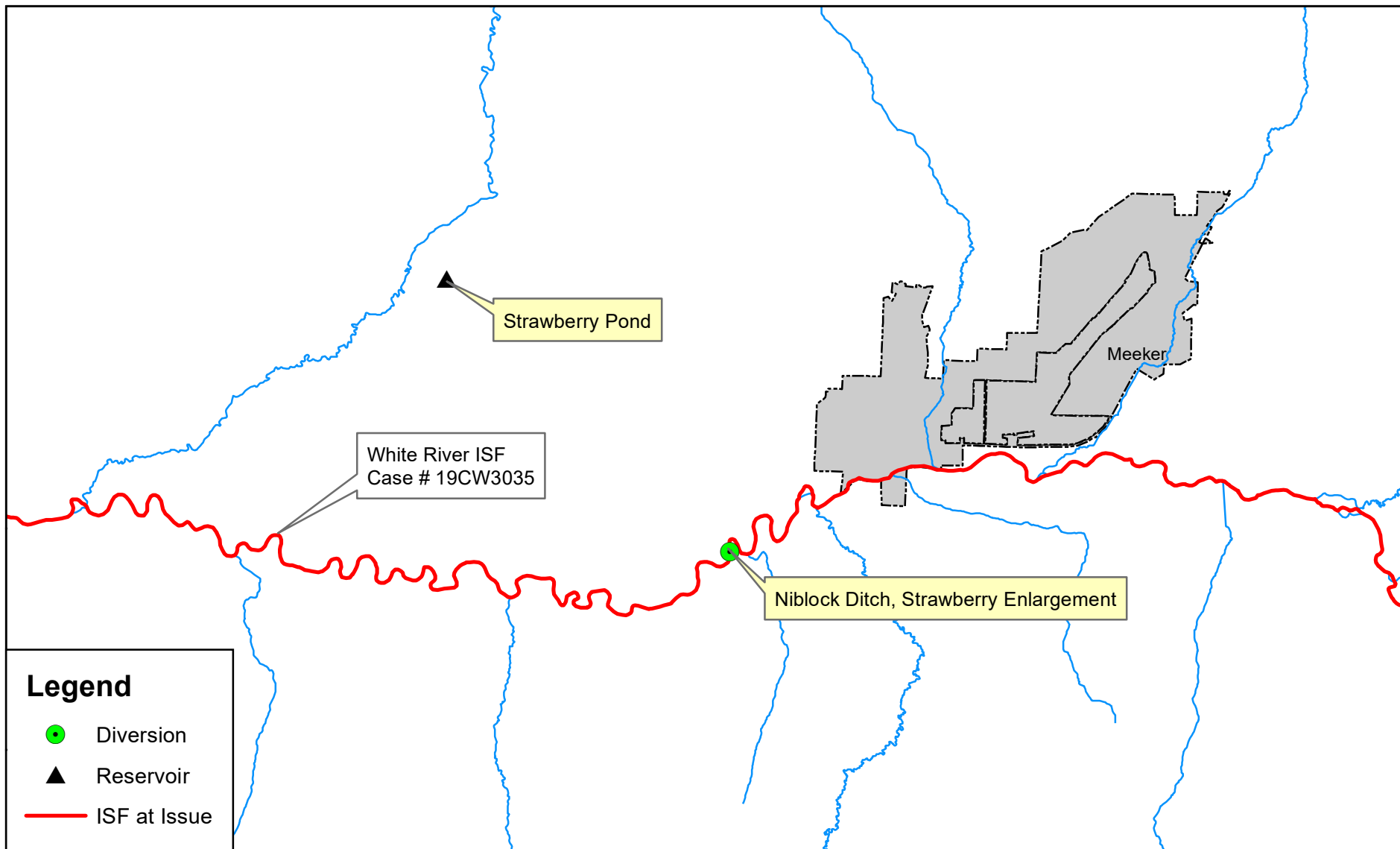
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The proposed plan for augmentation may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.
- The application does not present sufficient information to fully evaluate the extent to which the Board's instream flow rights may be injured.

**Other Objectors**

No other Statements of Opposition were filed.

**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.

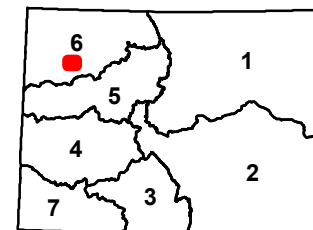


**COLORADO**  
**Colorado Water  
Conservation Board**

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting  
Consent Agenda Item 1.p. Statement of Opposition  
Case No. 19CW3035 (Division 4)  
Harvey and Seaton Cattle Co., LLC

0 0.75 1.5 3  
Miles



**DISTRICT COURT, WATER DIVISION 6, COLORADO  
TO ALL PERSONS INTERESTED IN WATER APPLICATIONS  
IN WATER DIVISION 6**

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following pages comprise a resume of Applications and Amended Applications filed in the office of Water Division 6, during the month of **December 2019**.

**2019CW3035 RIO BLANCO COUNTY – NIBLOCK DITCH AND STRAWBERRY**

**CREEK, TRIBUTARY TO THE WHITE RIVER. Harvey and Seaton Cattle Co., LLC** c/o Kevin L. Patrick, Esq. and Jason M. Groves, Esq., Patrick, Miller & Noto, P.C., 229 Midland Ave., Basalt, CO 81621 (970) 920-1030. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING CHANGE OF WATER RIGHTS. **First Claim: Approval of Plan for Augmentation.** Name Of structures to be augmented: Strawberry Pond and Niblock Ditch, Strawberry Enlargement. Legal Description: Strawberry Pond: SE1/4 of Section 18, Township 1, North Range 94W of the 6<sup>th</sup> P.M. (UTM X = 245740.00 m E, UTM Y = 4438073.00 m N). Niblock Ditch, Strawberry Enlargement point of diversion: NE1/4 of the SE1/4 Section 28, Township 1North, Range 94 West, of the 6<sup>th</sup> P.M.at a point whence the Southwest corner of Section 22, T1N, R94W bears North 22degrees East, 3,864feet. Water rights used for augmentation: Applicant owns 9.125 shares of the Niblock Ditch Company decreed to divert at the Niblock Ditch headgate. The Niblock Ditch Company owns the following water rights: Priority 17 for 2.4 cfs; Priority 66 for 5.4 cfs; Priority 108A for 2.6 cfs; Priority 108A for 22.2 cfs; Priority 351 for 29.28 cfs; Priority 693 for 0.60 cfs; Priority 712 for 1.35 cfs; Priority 729 for 5.15 cfs; 14.02 cfs from Case No. W-3661; and 16.0 cfs from Case Nos. W-3661 and 96CW0222. Type: Surface irrigation right. Source: White River and its tributaries including Strawberry Creek. Amount involved in this application: 0.16 cfs from the Applicant's undivided 23% interest in each priority described above and in more detail in the Application on file with the Court, representing the amount historically used to irrigate 8.0 acres to be dried up under this plan for augmentation. Current use: Irrigation. Complete statement of plan for augmentation: Applicant is the owner of the Strawberry Creek Ranch located west of Meeker, Colorado. The ranch is operated as a cattle ranch and wildlife retreat. Applicant will be constructing the Strawberry Pond which will be filled and refilled, and receive freshening flows from the White River via a lateral of the Niblock Ditch located on Applicant's property. Applicant files this plan to augment out-of-priority depletions resulting from evaporation use when the water rights described in paragraph 3 would otherwise be curtailed. The Strawberry Pond, and its associated recycling system, has an open water surface area of approximately 3.3 acres. By this plan for augmentation, Applicant will fill and replace the depletions from the open water surfaces with consumptive use credits by virtue of the removal of 8 acres of land historically irrigated by Applicant's Niblock Ditch water rights involved in this application. Evaporative depletions total 11.0 acre feet using a per acre evaporation rate of 3.333 acre-feet/acre as calculated using the SEO method outlined in the

General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits and SEO Policy No. 2004-3. The annual gross free water surface evaporation is 40 inches based on NOAA Technical Report NWS 33. The evaporative depletions from the 3.3 acres of open water surface areas are set forth in Table 1, below:

TABLE 1

(1)	(2)	(3)	(4)	(5)	(6)
Month	SEO Distribution	Gross Lake Evaporation	Days of Ice	Net Lake Evaporation	Strawberry Pond Evaporation
	(%)	(ft)	(days)	(feet)	(ac-ft)
January	3.0%	0.10	31	0.00	0.00
February	3.5%	0.12	28	0.00	0.00
March	5.5%	0.18	0	0.18	0.61
April	9.0%	0.30	0	0.30	0.99
May	12.0%	0.40	0	0.40	1.32
June	14.5%	0.48	0	0.48	1.60
July	15.0%	0.50	0	0.50	1.65
August	13.5%	0.45	0	0.45	1.49
September	10.0%	0.33	0	0.33	1.10
October	7.0%	0.23	0	0.23	0.77
November	4.0%	0.13	18	0.05	0.18
December	3.0%	0.10	31	0.00	0.00
Annual	100.0%	3.33	---	2.94	9.69

All water stored by free river runoff would otherwise be tributary to the White River or its tributaries. Out-of-priority depletions are shown on Table 2, on file with the Court. These outof-priority depletions come from: (1) the depletions due to evaporation when the Niblock Ditch is diverting. A monthly balance of depletions and replacement water source is also shown in Table 2, on file with the Court. Dry-up credits are sufficient to replace all evaporation depletions during the irrigation season, except in April. A maximum of 2.33 acre-feet of storage releases are required to fully augment all open water surface areas. If necessary, storage water can be released to replace return flow obligations from the change in use. Any excess consumptive use credits will be stored in the Strawberry Pond. Applicant will install appropriate measuring devices as requested by the Division Engineer and will develop an accounting plan acceptable to the Division Engineer. **Second Claim: Change of Water Right.** Name of structure: Niblock Ditch as described in First Claim. Amount: 0.16 cfs, as described in First Claim. Description of change: Applicant intends to change the water right from irrigation use to irrigation and augmentation use. Applicant intends to use the 0.16 cfs to augment the evaporative losses from the Strawberry Pond and its recycling system in the plan

for augmentation described in the First Claim, livestock depletions, and to replace return flow obligations. The new place of use is the Strawberry Pond described above. 8.0 acres, out of the 370 acres historically irrigated by Applicant from its Niblock Ditch water rights on Applicant's property will be removed from irrigation. Dry up areas may be rotated. Map of water right locations, place of use, and dry up areas is on file with the Court as Exhibit A. Diversion records are on file with the Court as Exhibit B. Water rights are components of an integrated water supply plan encompassing the water rights claimed in this application and the application filed in Case No. 19CW3036. Owners of land where water rights are located and where water rights are or will be put to beneficial use: Applicant; Owners of land upon which the Niblock Ditch headgate is located: Albert R. and Mary K. Krueger, 40000 Hwy 13, Meeker, CO 81641; and Niblock Ditch Company, c/o Ila Sturgeon, 1858 C.R. 32, Meeker, CO 81641.

**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 rights must appear to object and protest within the time provided by statute, or be forever barred.**

---

You are hereby notified that you will have until the last day of **February 2020** to file with the Water Court 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. A copy of such Statement of Opposition must be served on the Applicant or the Applicant's Attorney, with an affidavit or certificate of such service being filed with the Water Court, as prescribed by Rule 5, C.R.C.P. The filing fee for the Statement of Opposition is \$192.00, and should be sent to the Clerk of the Water Court, Division 6, 1955 Shield Dr. Unit 200, Steamboat Springs, CO 80487.

MARY ANN NINGER  
CLERK OF COURT  
ROUTT COUNTY COMBINED COURT  
WATER DIVISION 6

/s/ Julie A. Edwards  
Deputy Court Clerk