

Consent Agenda Item 1.a

September 16-17, 2020 Board Meeting

Case No. 20CW3029 (Water Division 2); The Bar NI Corporation

Summary of Water Court Application

Application for change of water rights and to amend 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 August 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 2 in the Purgatoire River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
09CW0090 (Div. 2)	Purgatoire River	confl M/N Fork Purgatoire River	confl Lopez Canyon	21 (5/15 - 8/15) 15 (8/16 - 9/15) 8.4 (9/16 - 11/30) 7 (12/1 - 4/14) 8.4 (4/15 - 5/14)	01/27/2009

Potential for Injury

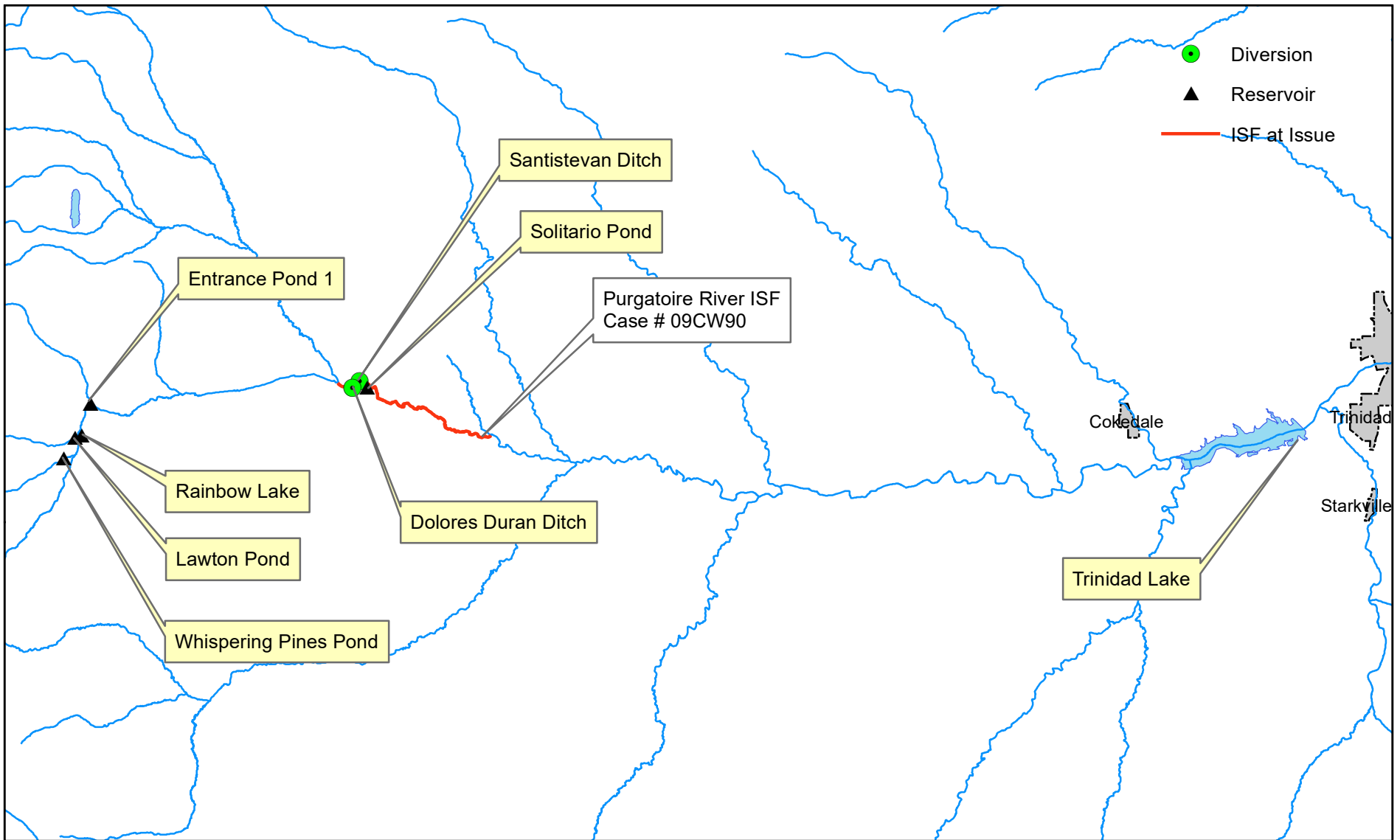
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The requested upstream move of a point of diversion for Applicant's senior water right could injure the intervening instream flow water right.

Other Objectors

Statements of Opposition were also filed by the City of Trinidad, Evergreen Natural Resources LLC, Purgatoire River Water Conservancy District, State and Division Engineers, Timber Creek Energy LLC, and Wapiti Raton LLC.

Attorney Representing CWCB

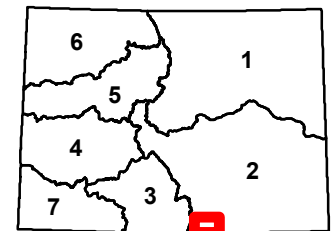
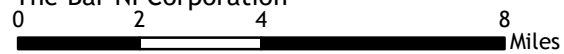
Philip E. Lopez, Senior Assistant Attorney General, is assigned to this case and can be contacted at philip.lopez@coag.gov, or 720-508-6312.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

September 16-17, 2020 CWCB Board Meeting
 Consent Agenda Item 1.a Statement of Opposition
 Case No. 20CW3029 (Division 2)
 The Bar NI Corporation



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2020

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during June 2020, 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. 2020CW3029; THE BAR NI CORPORATION, c/o Joel Dunlap 6614 Highway 12, Stonewall Gap, Westin, CO 81091, (Please address all pleadings and inquiries regarding this matter to Applicants' attorney: Thomas W. Korver, Petros & White, LLC, 1999 Broadway, Suite 3200, Denver, CO 80202, (303) 825-1980).

Application for Change of Water Rights and to Amend Plan for Augmentation

LAS ANIMAS COUNTY

2. **Background:** Applicant is the owner of a ranch ("Bar NI Ranch" or "Ranch") near Stonewall, Colorado in western Las Animas County, which includes four off-channel ponds. In Case No. 2013CW3070, Applicant obtained a decree which adjudicated absolute water rights for the four ponds on the Bar NI Ranch (the "Bar NI Ponds") and an additional conditional water right for the Solitario Pond located on a separate nearby property owned by Applicant, approved a plan for augmentation to replace out-of-priority evaporative depletions from the Bar NI Ponds with water stored in Trinidad Reservoir, and adjudicated an appropriative right of exchange in connection with the augmentation plan. This application seeks (a) a change of water rights allowing Applicant to store an existing water right in the Solitario Pond to augment evaporative depletions from the Bar NI Ponds; and (b) to amend the existing plan for augmentation decreed in Case No. 2013CW3070 to add water stored in the Solitario Pond as an augmentation source for the Bar NI Ponds. **I. APPLICATION FOR CHANGE OF WATER RIGHTS.**

3. **Description of Water Rights to be Changed:** A. Name of structure: The Santistevan Ditch. B. Date of original and all relevant subsequent decrees: The Santistevan Ditch was decreed by the District Court of Las Animas County in the general adjudication for District No. 19 August 10, 1903 as District Priority No. 52, Las Animas River Priority No. 32. There were no subsequent decrees. C. Legal description of structure: Located in the NE1/4 SW1/4, Section 19, T. 33S., R. 67W., 6th P.M. (UTM coordinates, NAD83, Easting, 506030.0, Northing 4112391.0). D. Decreed source of water: Purgatoire River. E. Appropriation Date: April 2, 1870. F. Total amount decreed to structure: 3.2 cfs absolute. G. Decreed uses: irrigation. 4. **Description of Proposed Changes:** The Applicant seeks (a) to change its one-third interest in the Santistevan Ditch to include piscatorial, irrigation, recreation, stock watering, wildlife habitat, fire suppression, augmentation, exchange and incidental

**Attachment
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aesthetic uses; and (b) to divert its one-third interest in the Santistevan Ditch during the months of April through September in the Dolores Duran Ditch described in paragraph 7.B below, and store all or some portion of Applicant's one-third interest in the Santistevan Ditch in the Solitario Pond described in paragraph 7.A below. To prevent an enlargement of use from these changes, Applicant will implement the plan for augmentation described in paragraph 8 below. A map depicting Applicant's point of diversion of the Santistevan Ditch and the Dolores Duran Ditch, the location of historic use of the Santistevan Ditch on Applicant's property, and the location of the Solitario Pond, 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.) A summary of diversion records is attached to the Application as **Exhibit B**.

5. Historical Use: Applicant's one-third interest in the Santistevan Ditch as described in paragraph 3 above has been historically used during the months of April through September to irrigate an average of 11.9 acres of land in the SE1/4 of Section 19, T. 33 S., R. 67 W., 6th P.M., with an irrigation water requirement of 1.91 acre-feet per irrigated acre. The historic consumptive use of water delivered from Applicant's one-third interest in the Santistevan Ditch averaged 12.10 acre-feet per year.

II. APPLICATION TO AMEND PLAN FOR AUGMENTATION.

6. Name of Structures to be Augmented: Lawton Pond, Rainbow Pond, Whispering Pines Pond, and Entrance Pond (collectively the "Bar NI Ponds"), as described in the decree in Case No. 2013CW3070, attached to the application as Exhibit C*.

7. Water Rights to be Used for Augmentation:

A. Water rights stored in the Solitario Pond in priority pursuant to the decree entered in Case No. 2013CW3070, as follows:

- i. Location: The pond will be located in the NE1/4 SW1/4 Section 19, T. 33S., R. 67W., 6th P.M., the centerline of the dam of which will be at a point approximately 3210 feet from the north section line and 2695 feet from the east section line of said Section 19. This location is 870 feet from the location of the Solitario Pond as decreed in Case No. 2013CW3070.
- ii. Source: Purgatoire River.
- iii. Diversion: Direct diversions through the Dolores Duran Ditch, precipitation runoff, and irrigation runoff, including runoff from the Reys Montoya Ditch as transferred for diversion in the Dolores Duran Ditch on April 17, 1943, in Case No. 11637. The Reys Montoya Ditch diverts from the Purgatoire River in the NE1/4 SW1/4, Section 32, T. 33S., R. 65W., 6th P.M. (UTM coordinates, NAD83, Easting, 526829.8, Northing 4108859). The Reys Montoya Ditch was originally decreed in the amount of 3.2 cfs on August 10, 1903 as District Priority No. 10, Las Animas River Priority No. 10, with an appropriation date of February 1, 1863.
- iv. Appropriation Date: December 31, 2013.
- v. Amount: 7.0 acre-feet, all active capacity, conditional, together with the right of multiple refills in this amount when water is available in priority, to be filled at a rate of diversion of 7.0 cfs.
- vi. Approximate Surface Area: 2.0 acres. (1.1 actual).
- vii. Use: Piscatorial, irrigation, recreation, stock watering, wildlife habitat, fire suppression, augmentation, exchange and incidental aesthetic uses.

B. Applicant's one-third interest in the Santistevan Ditch as described in paragraph 3 above, and as changed as described in paragraphs 4-5 above. Applicant's one-third interest in the Santistevan Ditch has been historically used during the months of April through September to irrigate an average of 11.9 acres of land in the SE1/4 of Section 19, T. 33 S., R. 67 W., 6th P.M., with an irrigation

water requirement of 1.91 acre-feet per irrigated acre. The historic consumptive use of water delivered from Applicant's one-third interest in the Santistevan Ditch averaged 12.10 acre-feet per year. Applicant's interest in the Santistevan Ditch will be diverted in the Dolores Duran Ditch which diverts from the Middle Fork of the Purgatoire River in the SE1/4 NE1/4, Section 24, T. 33S., R. 68W., 6th P.M. (UTM coordinates, NAD83, Easting, 505190.0, Northing 4112320.0), and conveyed to the Solitario Pond described in paragraph 7.A above. C. Water leased from the City of Trinidad including water released from, or credited against, the City's account in Trinidad Reservoir as described in the decree in Case No. 2013CW3070. Applicant will discontinue use of water leases from the Town of Trinidad following the expiration of Applicant's lease. D. Applicant may also replace yearly evaporation lost with an equivalent volume of water released from the water rights described in paragraph 6 above. The ponds described in paragraph 6 may only be used for augmentation of out-of-priority depletions caused by the four Bar NI Ponds described in said paragraph 6. 8. Statement of Plan for Augmentation: The Applicant will augment actual out-of-priority evaporative depletions and storage from the Bar NI Ponds with releases from one of the sources included in paragraph 7 above. The capacity of the Bar NI Ponds is 7.992 acre-feet. The total surface area of the Bar NI Ponds is 1.751 surface acres. Based on NOAA Technical Report 33, and assuming the Bar NI Ponds do not freeze in the winter months (November through March), maximum evaporative depletions for the Bar NI Ponds is estimated to be 5.95 acre-feet annually. Applicant will account for evaporative loss in the same month that the losses occur by providing replacement water in accordance with the monthly schedule of evaporative loss provided in Exhibit D*. If the Applicant is unable to replace evaporative losses from the Bar NI Ponds with sufficient water from one of the sources included in paragraph 7 above, Applicant will obtain and use other approved fully consumable sources or release water from the Bar NI Ponds pursuant to the monthly schedule in **Exhibit D**, release water already stored in the Bar NI Ponds for the benefit of other Bar NI Ponds or to replace out-of-priority depletions in one or more Bar NI Ponds, or will curtail diversions into the Bar NI Ponds. So as to assure the operation of the subject augmentation plan, Applicant will install and maintain such water measuring devices and implement such accounting procedures as may be required to verify that the amount of augmentation water replaces the amount of consumptive use resulting from the out of priority depletions augmented herein. 9. Ownership: The land upon which the Bar NI Ponds, the Solitario Pond and the Santistevan Ditch headgate are located is owned by Applicant and shown on **Exhibit E**. The Bureau of Reclamation owns the land upon which the Trinidad Reservoir diversion and storage structures are located. Its address is: United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 805379711. WHEREFORE, Applicant respectfully requests that the Court enter a decree approving the change of water right described in paragraphs 3-5, approving the augmentation plan amendment described in paragraphs 6-8, and granting other such relief as the Court deems just and proper.

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 August 2020, (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.

Witness my hand and the seal of this Court this 6th day of July 2020.



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)
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