

Consent Agenda Item 1.n

March 15-16, 2022 Board Meeting

Case No. 21CW3058 (Water Division 6); David Y. Cogswell

Summary of Water Court Application

Application for Absolute Surface Water Right and Storage Right.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 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 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)	White River	confl NF & SF White River	confl Piceance Creek	200 (1/1 - 12/31)	11/15/1977
W-3652H (1977)	North Fork White River	confl Marvine Creek	confl S Fk White River	120 (1/1 - 12/31)	11/15/1977
80CW0379 (Div. 5)	Fawn Creek	confl EF & WF Fawn Creek	confl NF White River	3 (1/1 - 12/31)	05/07/1980

Potential for Injury

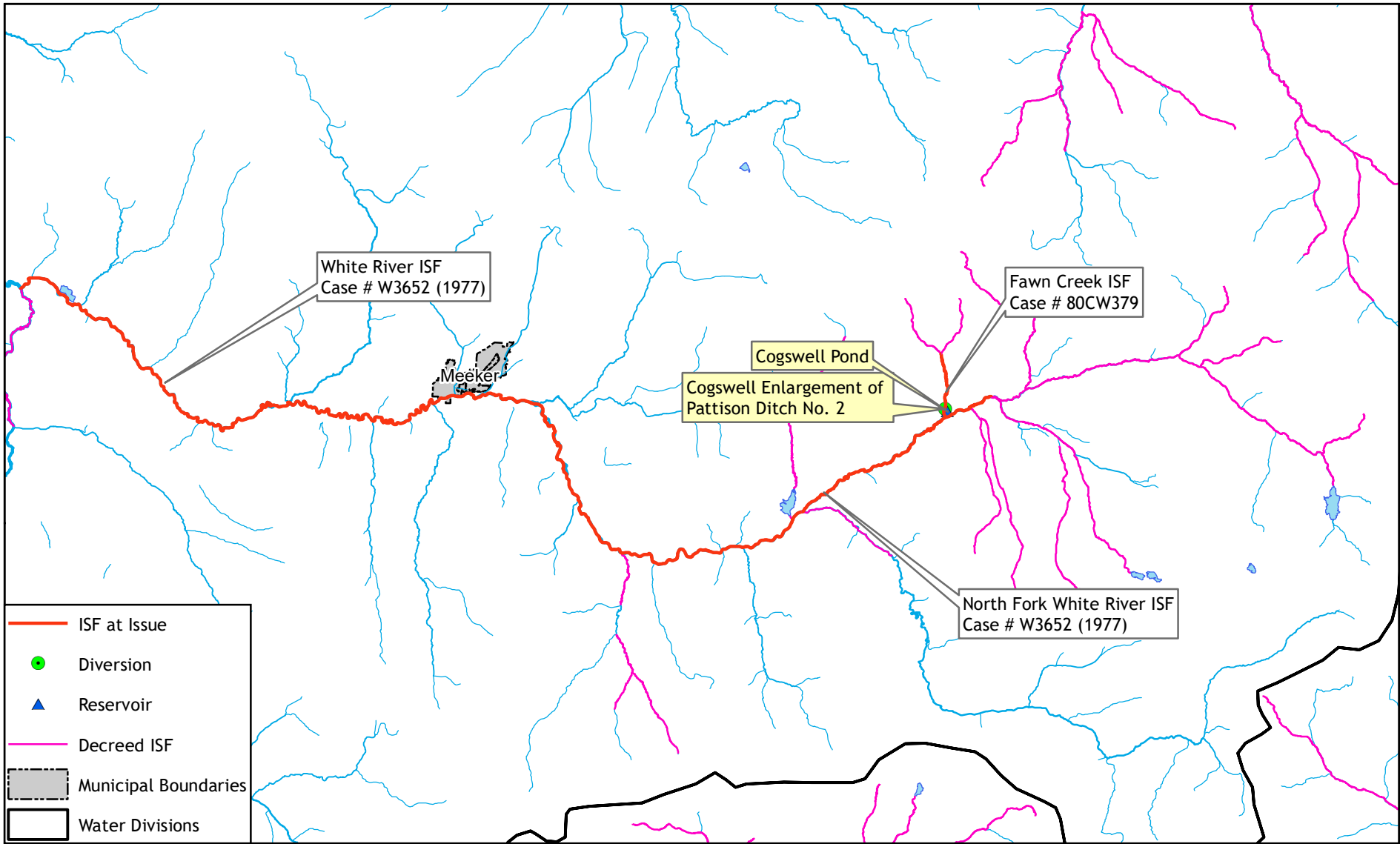
- The water rights subject of the application are claimed with appropriation dates senior to the CWCB's instream flow rights. The CWCB's instream flow water rights might be subject to the claimed water rights under § 37-92-102(3)(b), C.R.S., if the claimed water rights are sufficiently documented.
- The proposed freshening flow use of the Cogswell Enlargement of the Pattison Ditch No. 2 water right could injure the CWCB's instream flow water rights because it is or may be fully depletive to a segment of an instream flow reach.
- Terms and conditions should be included in any decree entered in this case to ensure that the decreed water rights will not injure the CWCB's instream flow water rights.

Other Objectors

A Statement of Opposition was also filed by C Lazy S Ranch, Inc.

Attorney Representing CWCB

Patrick L. Barker, Assistant Attorney General, is assigned to this case and can be contacted at patrick.barker@coag.gov, or 720-508-6297.

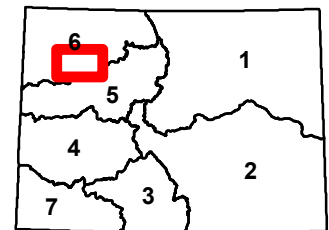
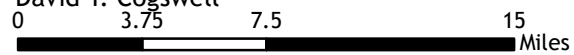


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 15-16, 2022 CWCB Board Meeting
 Consent Agenda Item 1.n Statement of Opposition
 Case No. 21CW3058 (Division 6)

David Y. Cogswell



**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 2021**

2021CW3058 APPLICATION FOR ABSOLUTE SURFACE WATER RIGHT AND STORAGE RIGHT in Rio Blanco County. 1. Name, Address, Telephone Number, and Email Address of Applicants: **David Y. Cogswell**, 26487 County Road 8, Meeker, CO 81641, cogsent@gmail.com, (970) 878-5134. Direct all pleadings to: Douglas M. Sinor, Mirko L. Kruse, TROUT RALEY, 1120 Lincoln Street, Suite 1600, Denver, CO 80203. 2. Description of Absolute Surface Water Right: A. Name of Structure: Cogswell Enlargement of Pattison Ditch No. 2. B. Legal Description: i. Decreed location: As decreed in the Decree of September 5, 1911, District Court, Rio Blanco County, the headgate for the Pattison Ditch No. 2 is decreed at a point on the bank of Fawn Creek, whence the east quarter section corner of Section 19, Township 1 North, Range 90 West of the 6th P.M. bears South 87 degrees and 21' East 1101 feet. ii. Actual location: As shown on **Exhibit A**, the headgate of the Pattison Ditch No. 2 is located on the East bank of Fawn Creek and is situated within Tract 39, in Section 19, Township 1 North, Range 90 West of the 6th P.M. at a point whence Angle Point 1 of said Tract 39 bears N63°20'52"E a distance of 1,072.37 feet. Said headgate of the Pattison Ditch No. 2 being situated at a point being 2,245 feet West of the East Line and 1,511 feet North of the South line of said Section 19, Township 1 North, Range 90 West of the 6th P.M. C. Source: Fawn Creek, tributary to the White River D. Date of Appropriation: July 1, 1965. E. How Appropriation Was Initiated: By constructing the Cogswell Pond and utilizing the Pattison Ditch No. 2 as the filing structure for the Cogswell Pond and for direct irrigation. F. Amount: 0.5 cfs, absolute. G. Use: Direct use for irrigation of 28 acres located on Tracts 39 and 52 of Section 19, Township 1 North, Range 90 West of the 6th Principal, as shown on **Exhibit A**, and to provide freshening flows for the Cogswell Pond. 3. Description of Absolute Storage Right: A. Name of Structure: Cogswell Pond B. Legal Description: As shown on **Exhibit A**, the Cogswell Pond is located in Tract 39, in the Southwest Quarter of the Southeast Quarter of Section 19, Township 1 North, Range 90 West of the 6th Principal Meridian at a point whence Angle Point 1 of said Tract 39, bears N43°10'58"E a distance of 1,488.53 feet. Said point being 2,291 feet West of the East Line and 905 feet North of the South line of said Section 19, Township 1 North, Range 90 West of the 6th Principal Meridian. C. Source: Fawn Creek, tributary to the White River and filled from the Cogswell Enlargement of Pattison Ditch No. 2. D. Surface Area: Approximately 15,555 square feet. E. Dam Height: Approximately 4.5 feet. F. Total Capacity: 1.53 acre-feet. G. Amount: 1.53 acre-feet, absolute, with the right to initial fill and continuous refill. H. Rate of Diversion: 0.5 cfs, from the Cogswell Enlargement of Pattison Ditch No. 2. I. Date of Appropriation: July 1, 1965. J. Use: Fish stocking and propagation, recreation, aesthetic, and irrigation of 28 acres located on Tracts 39 and 52 of Section 19, Township 1 North, Range 90 West of the 6th Principal, as shown on **Exhibit A**. After storage in Cogswell Pond, water is returned to Fawn Creek at a point located in Tract 39, in the Southwest Quarter of the Southeast Quarter of Section 19, Township 1 North, Range 90 West of the 6th Principal Meridian at a point whence Angle Point 1 of said Tract 39 bears N50°41'48"E a distance of 1,462.50 feet. Said point being 2,408 feet West of the East Line and 1,060 feet North of the South line of said Section 19, Township 1 North, Range 90 West of the 6th Principal Meridian. 4. Name and address of landowners: The Cogswell Enlargement of Pattison Ditch No. 2 and the Cogswell Pond are located on lands owned by Applicant. (3 pages.)

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 2022** 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.

CARMMA PARKISON
CLERK OF COURT
ROUTT COUNTY COMBINED COURT
WATER DIVISION 6

/s/ Julie A. Edwards
Deputy Court Clerk