

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Linda Bassi and Kaylea White
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: May 3, 2013

Jennifer L. Gimbel
CWCB Director

RE: **Agenda Item 11, May 14-15, 2013 Board Meeting--
Request for Authorization to Proceed to Trial in Case No. 2-08CW106,
Application of Upper Arkansas Water Conservancy District**

This case is set for a four-day trial beginning on June 11, 2013. The parties are discussing settlement options and preparing for trial on a parallel track. Staff and the Attorney General's Office intend to discuss litigation strategy and settlement options with the Board in executive session.

Recommendation

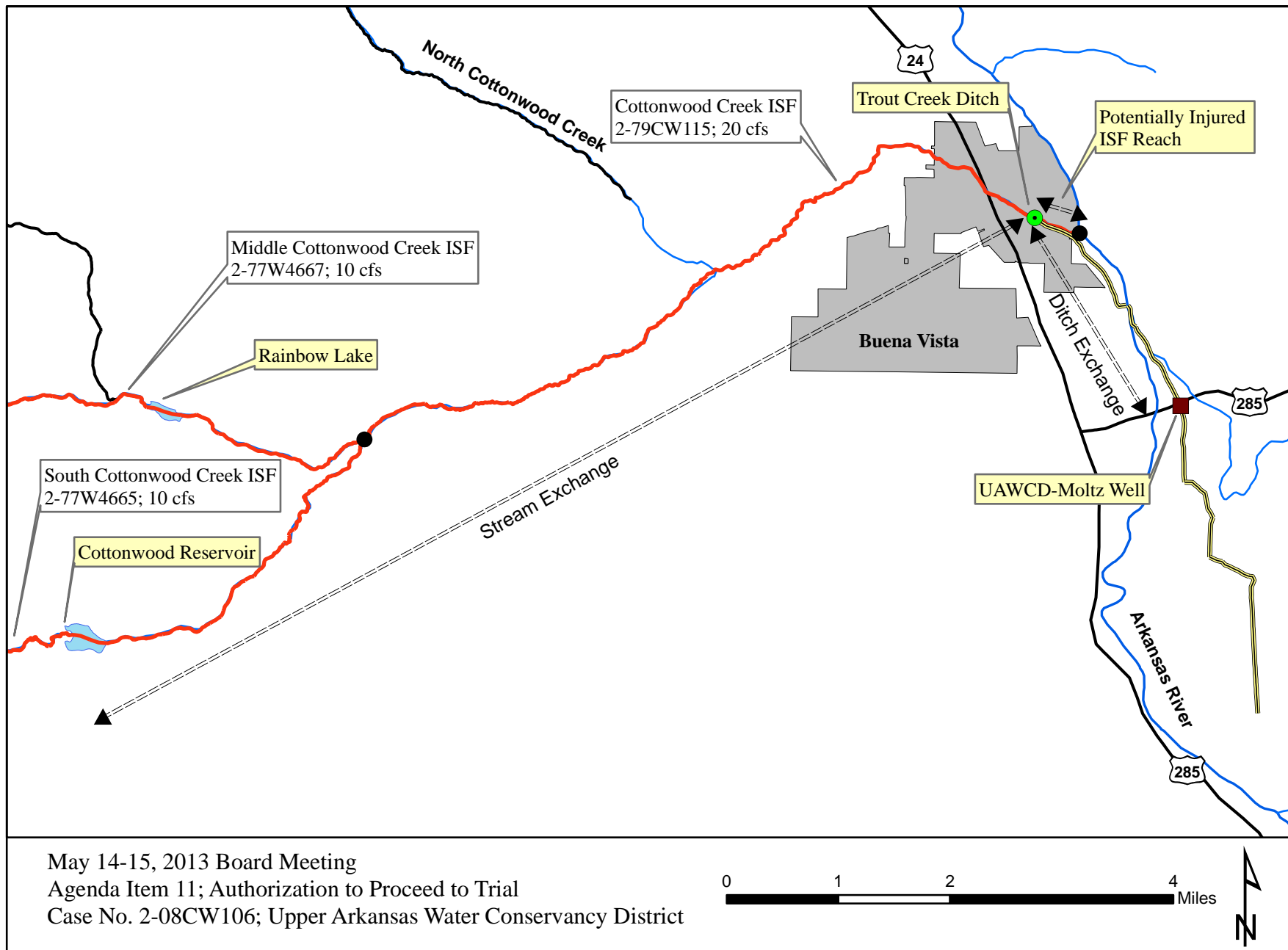
Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to proceed to trial to protect its instream flow water rights in the event that Staff and the Attorney General's Office are unable to reach a settlement with the Applicant.

Background

The CWCB filed a Statement of Opposition on February 25, 2009 to protect its ISF water rights on Middle, South and the main stem of Cottonwood Creek, as follows:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
2-79CW115	Cottonwood Creek	20	3/14/1979	Arkansas Headwaters	Chaffee
2-77W4667	Middle Cottonwood Ck	10	11/15/1977	Arkansas Headwaters	Chaffee
2-77W4665	South Cottonwood Ck	10	11/15/1977	Arkansas Headwaters	Chaffee

Applicant claims an appropriative right of exchange on a stream reach and an un-appropriated exchange on a ditch segment. The most recent draft decree provides that "the substitute supply for the stream exchange will be provided to Cottonwood Creek at the headgate of the TCDC Ditch" to be supplied by "the operation of the ditch exchange." The "physical supply of the substitute supply" for the ditch exchange "provided at the lower terminus is derived from a well diverting water from the Arkansas River alluvium, and it will be used for irrigation purposes." Applicant also "seeks an approval of a plan for augmentation that would provide additional supplies of replacement water to be utilized under the existing UAWCD Plans" for augmentation of out-of-priority diversions throughout its entire service area.



May 14-15, 2013 Board Meeting
Agenda Item 11; Authorization to Proceed to Trial
Case No. 2-08CW106; Upper Arkansas Water Conservancy District