

**Consent Agenda Item 1.n**

March 21-22, 2018 Board Meeting

Case No. 17CW3043 (Water Division 6); City of Steamboat Springs

**Summary of Water Court Application**

This is an Application for an absolute water storage right and an appropriative right of exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2018 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 6 in the Upper Yampa River Watershed that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
76W0959^	Burgess Creek (Excelsior No.1)	Forest Service boundary	confl Yampa River	0.0375 (1/1 - 12/31)	12/31/1900
76W0959^	Burgess Creek (Excelsior No.1)	Forest Service boundary	confl Yampa River	0.0375 (1/1 - 12/31)	12/31/1901
76W0959^	Burgess Creek (Excelsior No.1)	Forest Service boundary	confl Yampa River	0.0293 (1/1 - 12/31)	12/31/1902
79CW0103	Burgess Creek (ISF Approp.)	Forest Service boundary	confl Yampa River	2.0 (1/1 - 12/31)	03/14/1979

^ Donated/Acquired Water Right

**Potential for Injury**

- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- If a flow-through water right is intended, it could injure the CWCB's instream flow water right because it would be fully depletive to a segment of the intervening instream flow water right.
- The Applicant must demonstrate its ownership and decreed uses of the Enlargement of the Hoyle and Knight (Priority No. 189a).
- While the appropriation date claimed in the application is junior to the instream flow on Burgess Creek, it appears that at least part of Casey's Pond may have been constructed prior to the instream flow appropriation on Burgess Creek. Therefore, the instream flow water right decreed in Case No. 79CW103 might be subject to a portion of the filling of Casey's Pond under C.R.S. 37-92-102(3)(b), provided that such claimed use at the time of the instream flow appropriation is sufficiently documented.

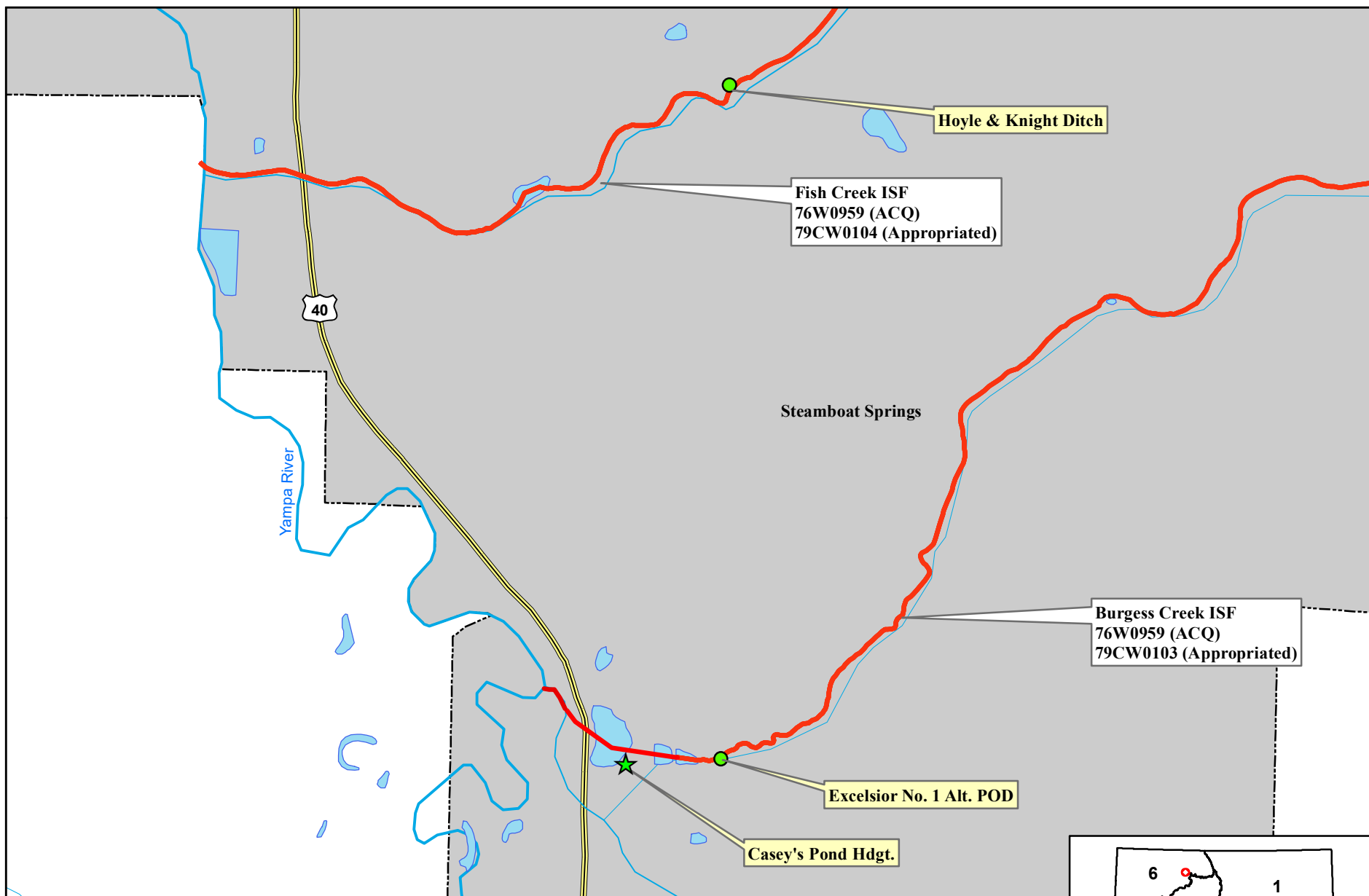
- Depending on when it was built or enlarged, Casey's Pond, or a portion of Casey's Pond, may be an inundation of the instream flow water right on Burgess Creek.

#### **Other Objectors**

Statements of Opposition were also filed by Mt. Werner Water and Sanitation District, Steamboat Ski & Resort Corporation, and Upper Yampa Water Conservancy District.

#### **Attorney Representing CWCB**

Jeffrey N. Candrian, Assistant Attorney General, is assigned to this case and can be contacted at [jeffrey.candrian@coag.gov](mailto:jeffrey.candrian@coag.gov), or 720-508-6307.



March 21-22, 2018 CWC Board Meeting  
 Consent Agenda Item 1n: Statement of Opposition  
 Case No. 17CW3043 (Water Division 6)  
 City of Steamboat Springs

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