

**Consent Agenda Item 1.d**

November 14-15, 2018 Board Meeting  
Case No. 18CW3048 (Water Division 2); Young Life and the  
Upper Arkansas Water Conservancy District

**Summary of Water Court Application**

This is a corrected Application for change of water rights and appropriative rights of exchange.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in October 2018 to protect CWCB's instream flow water rights.

**CWCB Instream Flow Water Rights**

The CWCB holds instream flow water rights in Water Division 2, including the following, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
79CW0115	Cottonwood Creek	confl M&S Cottonwood Creeks	confl Arkansas River	20 (1/1 - 12/31)	03/14/1979
77W4667	Middle Cottonwood Creek	confl NF M Cottonwood Creek	confl S Cottonwood Creek	10 (1/1 - 12/31)	11/15/1977
77W4663	North Cottonwood Creek	headwaters in vicinity	Forest Service boundary	7 (1/1 - 12/31)	11/15/1977
77W4665	South Cottonwood Creek	confl Mineral Creek	confl M Cottonwood Creek	10 (1/1 - 12/31)	11/15/1977

**Potential for Injury**

- Out-of-priority depletions from the wells must be replaced in the proper time, place, and amount so that the CWCB's instream flow water rights are not injured.
- Use of the changed water rights in augmentation plans previously decreed to the Applicant Upper Arkansas Water Conservancy District ("UAWCD") must be subject to any relevant terms and conditions from the decrees approving such augmentation plans, including but not limited to the terms and conditions from the decree entered in Case 06CW32.
- The proposed change of water rights could cause an expansion of use of water rights that are senior to the CWCB's instream flow water rights and could alter the time, place, and amount of historical return flows, which could injure the CWCB's instream

flow water rights unless appropriate terms and conditions to prevent such injury are included in the decree entered in this matter.

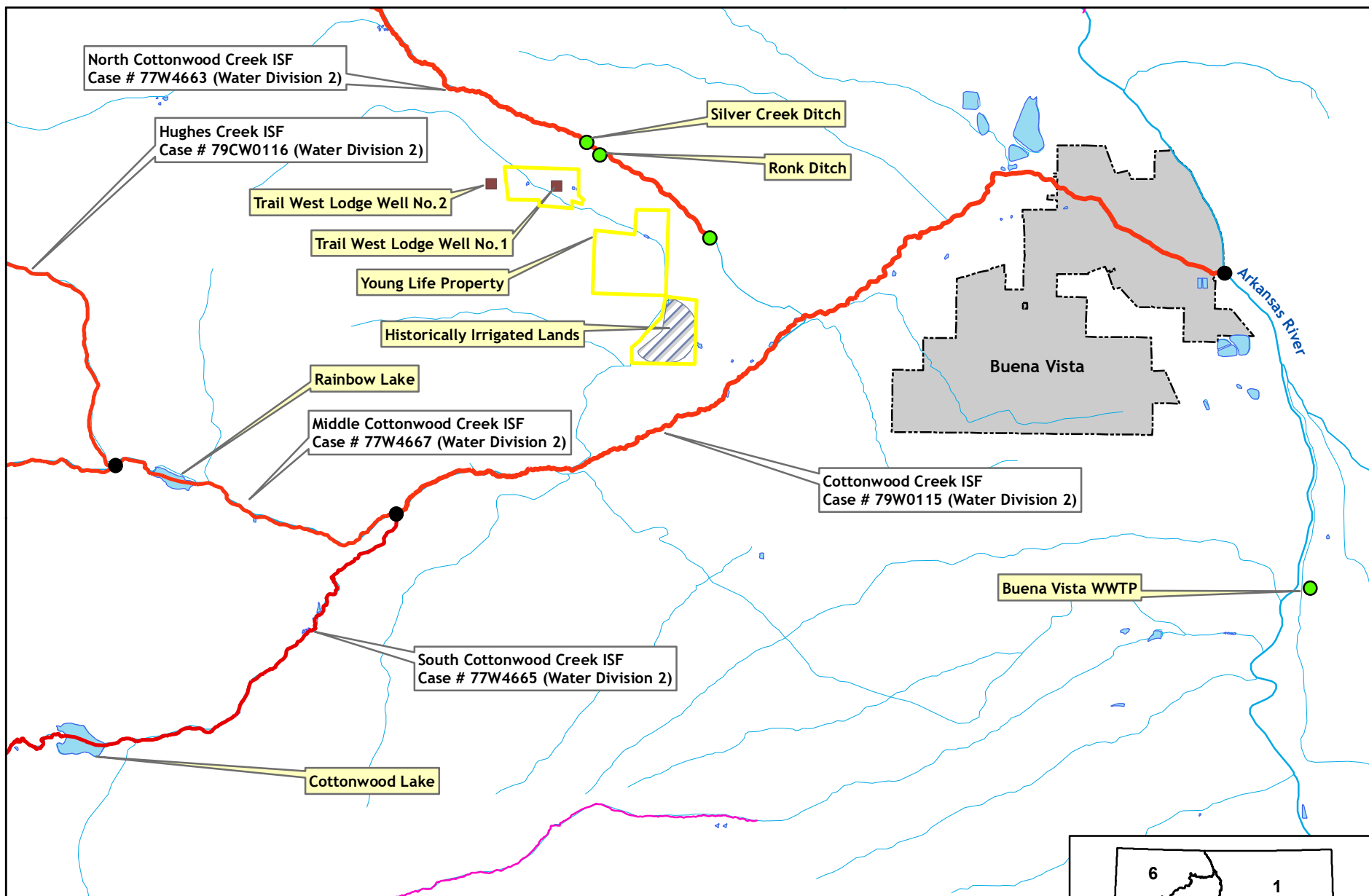
- The decree entered in this matter must include terms and conditions for the storage of the changed water rights in alternate places of storage so that the CWCB's instream flow water rights are not injured.
- The decree entered in this matter must include appropriate terms and conditions for the use of the contemplated recharge pits so that the CWCB's instream flow water rights are not injured.
- Any extraterritorial or undefined use of the changed water rights cannot be evaluated because the types of use to be augmented and the places of use are undefined. These uses could cause injury to the CWCB's instream flow water rights.
- Applicants must establish all the elements of a new appropriation in order to appropriate historical return flows.
- A claim to use and reuse the changed water rights to extinction is subject to the requirements that Applicants maintain dominion and control of such water, and that such water be accurately quantified and accounted for before re-diversion from any stream.
- The proposed appropriative rights of exchange should be defined clearly, including referencing any intervening instream flow water rights, and the decree should include appropriate terms and conditions for the operation of such exchanges so that the CWCB's instream flow water rights are not injured.
- Exchanges to various reservoirs not included under the appropriative rights of exchange claimed in the application should be defined clearly, including referencing intervening instream flow water rights, and the decree should include appropriate terms and conditions for the operation of such exchanges so that the CWCB's instream flow water rights are not injured.

#### **Other Objectors**

Statements of Opposition were also filed by Town of Buena Vista, City of Salida, Bob Woolmington, Lee Rooks, Kelly Ranch, and Sailor Investments, L.L.P.

#### **Attorney Representing CWCB**

Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at [andy.nicewicz@coag.gov](mailto:andy.nicewicz@coag.gov), or 720-508-6259.



November 14-15, 2018 CWCB Board Meeting  
 Consent Agenda Item 1d: Statement of Opposition  
 Case No. 18CW3048 (Water Division 2)  
 Young Life and the Upper Arkansas Water Conservancy District

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