

**Consent Agenda Item 1.a**

January 27-28, 2020 Board Meeting

Case No. 19CW3061 (Water Division 2); Thomas H. Smith

**Summary of Water Court Application**

Application for Change of Water Right.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in November 2019 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 Arkansas River Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-4659 (1977)	North Fork South Arkansas River	confl McCoy Creek	hdgt North Fork Ditch	10 (1/1 - 12/31)	11/15/1977

**Potential for Injury**

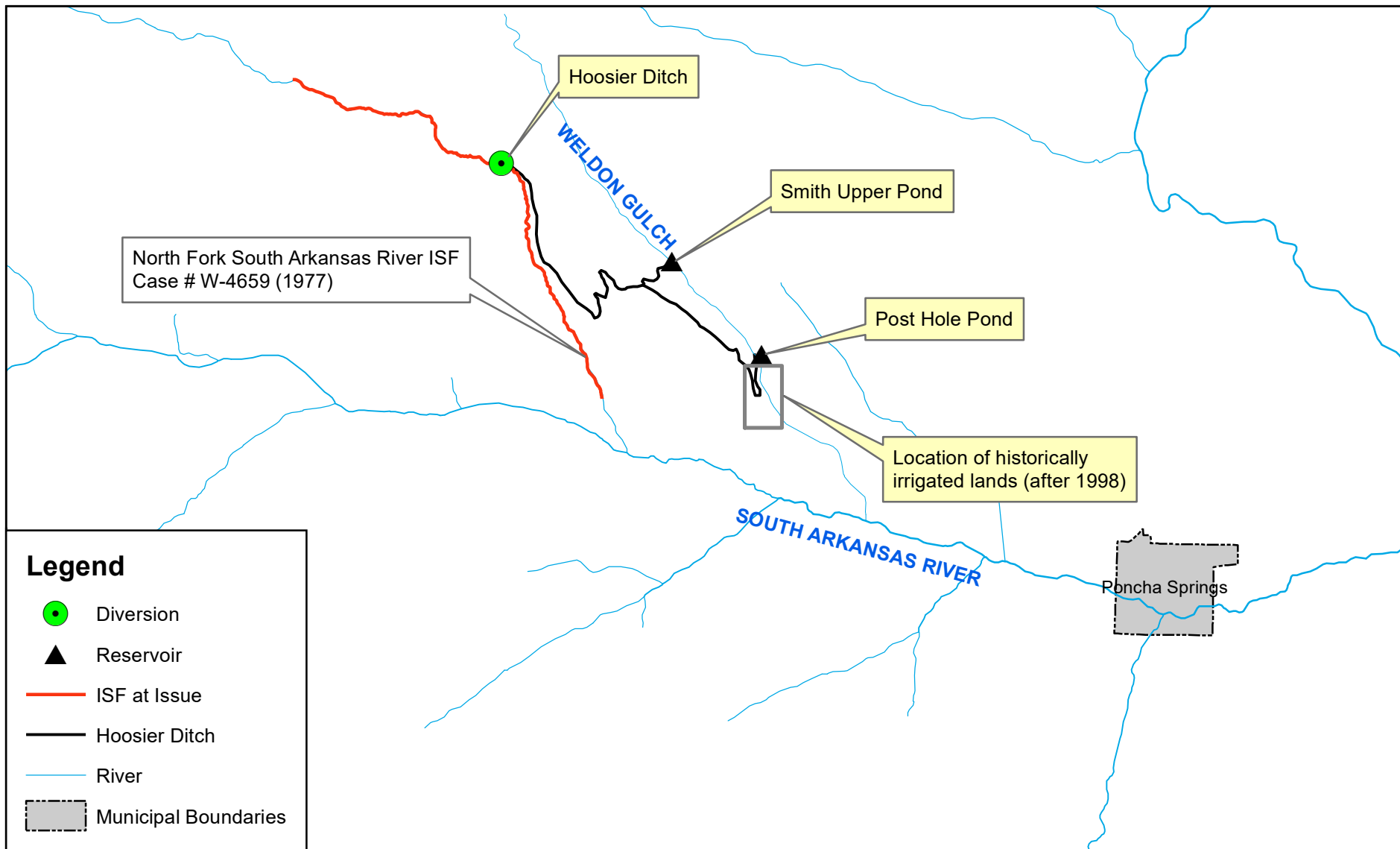
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.

**Other Objectors**

Statements of Opposition were also filed by Anthony Timko, State and Division Engineers, Colorado Division of Water Resources, Upper Arkansas Water Conservancy District, and Weldon Creek Property Owners Association.

**Attorney Representing CWCB**

William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.

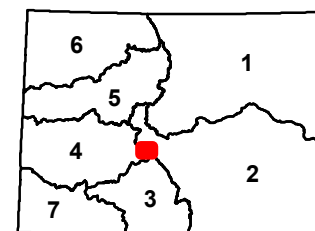


**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

January 27-28, 2020 CWCB Board Meeting  
 Consent Agenda Item 1.a: Statement of Opposition  
 Case No. 19CW3061 (Division 2)  
 Thomas H. Smith

0 1 2 4 Miles



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

**RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER 2019**

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 September 2019, 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. 2019CW3061; THOMAS H SMITH, P.O. Box 940, Paonia, CO 81428,**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David Hallford, Erika Gibson, Balcomb & Green, P.C., 818 Colorado Ave, Glenwood Springs, CO 81601, 970-945-6546)

Application for Change of Water Right

**CHAFFEE COUNTY**

**2. Decreed water right for which change is sought:** **A. Structure:** Hoosier Ditch. **B. Original and all relevant subsequent decrees:** CA1127, 6/19/1890. CA1530, 7/13/1887. **C. Legal description of structure:** SW SW, Sec. 16, T. 50 N., R. 7 E., NMPM; UTM Zone 13 (NAD 83), Easting 394675, Northing 4270830. The decree in CA 1127 states: "the headgate is located at a point on the SW ¼ of the SE ¼ Sec. 17, Tp. 50N. R. 7 E. whence the SE Cor. Sec. 17 bears S. 71° E. 1630 ft." **D. Source:** N. Fork of the S. Arkansas River. **E. Approp. date:** Priority No. 107C, 4/1//1882. Priority No. 132, 5/31/1883. Priority No. 183D, 11/13/1888. Priority No. 175, 11/ 30/1888. Priority No 183, 9/7/1889. **F. Total Amt. decreed to structure:** 19.8 c.f.s. total from the following decreed rights Priority No. 107C 2.5 c.f.s.; Priority No. 132 3.48 c.f.s.; Priority No. 183D 4.5 c.f.s.; Priority No. 175 1.0 c.f.s.; Priority No. 183 8.32 c.f.s. **G. Decreed use:** Irr. **H. Amt. to be changed:** The Hoosier Ditch water rights are divided and owned in one-sixth interests among Applicant and other users. Applicant owns a 2/6<sup>th</sup> interest in the Hoosier Ditch water rights and requests to change such Amt. of his interest as is needed for the changed uses described in Sec. 3 below. Applicant's ownership interest totals 6.6 c.f.s. of the 19.8 c.f.s. decreed to the Hoosier Ditch. The Amt. to be changed to the new uses is estimated to be one-quarter of a one-sixth interest, totaling 0.826 c.f.s. and distributed by priority as follows: Priority No. 107C 0.104 c.f.s.; Priority No. 132 0.145 c.f.s.; Priority No. 183D 0.188 c.f.s.; Priority No. 175 0.042 c.f.s.; Priority No. 183 0.347 c.f.s. Applicant requests that the final Amt. changed will be adjusted to increase or decrease the total and individual priority amts. of the water rights changed based upon the Court's adjudication

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of Hist. use and the Amt. needed for the changed use. **3. Description of proposed change:** A. Changes of type and place of use: Applicant requests to change a portion of his Hoosier Ditch water rights, as described in Subsection. 2 above, for diversion into and storage in the Smith Upper Pond for fire prot. and suppression within the Weldon Gulch Subdivision and replacement of pond evap. to assure availability of the Pond's capacity for fire prot. and suppression. That Pond is pending adjudication of a conditional storage right in Case No. 15CW3056. Smith Upper Pond is an existing structure described as follows: **1. Location:** The dam is located in UTM Zone 13 (NAD 83), Easting 397645, Northing 4269120. **2. Capacity:** 0.54 acre-ft., all active capacity. **3. Surface area:** 0.18 acres. **4. Sources:** N. Fork of S. Arkansas River via Hoosier Ditch for delivery of Hoosier Ditch changed water rights; and Weldon Gulch, tributary of the S. Arkansas River for the right claimed in 15CW3056. **B. Hist. use:** See Application for details. Prior to 1999, Smith's interest in the Hoosier Ditch water rights irrigated approx. 40 acres in the NE¼ Sec. 27, T. 50 N., R. 7 E. NMPM on property that is now part of the Weldon Creek Subdivision. An average of 457.4 acre-ft. were diverted annually into the Hoosier Ditch during water years 1950 through 2018. The water delivered to the Smith Upper Pond under Smith's 2/6<sup>th</sup> interest in the Hoosier Ditch water rights averaged 122.2 acre-ft. annually during water years 1950 through 2018. The Hist. consumptive use ("HCU") under Smith's Hoosier Ditch rights was estimated for 1999 through 2018, the period of his ownership. The HCU during this period included the use by other owners of Hoosier Ditch water rights and the evap. from the Smith Upper and Lower Ponds. During 1999 through 2018, the water delivered to Weldon Gulch for irr. and pond operation under the Smith interest averaged 102.2 acre-ft. annually. The HCU before 1999 when the 40 acres were irrigated was undoubtedly significantly larger. Applicant's engineer has estimated that not more than 0.54 acre-ft. will be required to fill the Smith Upper Pond and that the evap. from the Upper Pond will be 0.35 acre-ft. annually, for a total max. annual requirement for changed use at the Pond of 0.89 acre-ft. Thus, HCU from 1/4<sup>th</sup> of a 1/6<sup>th</sup> interest will be adequate to fill Smith Upper Pond and replace the pond's evap. **4. Owner or reputed owner of the land upon which water is or will be stored:** Applicant. **5. Remarks:** A map showing the locations of the Hoosier Ditch diversion, Smith Upper Pond and Hist. irr. with Applicant's Hoosier Ditch rights is attached as 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.) Diversion records relied upon by Applicant's consultant for analysis of Hist. use of the water rights to be changed are attached as Exhs. B and C.

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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 November 2019, (forms available at Clerk's office or at [www.courts.state.co.us](http://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.

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Witness my hand and the seal of this Court this 10<sup>th</sup> day of October 2019.

*Michele Santistevan*

Michele M. Santistevan, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8832



(Court seal)  
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