

Consent Agenda Item 1.b

November 17-18, 2021 Board Meeting

Case No. 21CW3044 (Water Division 2); Triview Metropolitan District

Summary of Water Court Application

Application for change of water rights.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in October 2021 to protect CWCB’s instream flow water rights and to protect CWCB’s exclusive authority to hold 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
79CW0115	Cottonwood Creek	confl M&S Cottonwood Creeks	confl Arkansas River	20 (1/1 - 12/31)	03/14/1979

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 extraterritorial use for the changed water rights cannot be evaluated because the type of use and the place of use is undefined. These uses could injure the CWCB’s instream flow water rights.
- The requested upstream move of a point of diversion for Applicant’s senior water right could injure the intervening instream flow water right.
- The application claims uses for “fish and wildlife propagation” and “creation and maintenance and/or enhancement of wetlands.” In as much as these claims amount to an instream flow water right, the CWCB has exclusive authority to hold instream flow water rights and Applicant has not requested a contract or other device from the CWCB for instream flow use of the water.
- Historical return flows should be maintained in time, place, and amount regardless of a call. Applicant may appropriate the historical return flows, if it desires to not

maintain return flows at the historical time, place, and amount but any decree entered in this case must set forth all elements of the appropriated water right, including but not limited to: the diversion points, source, amounts, beneficial uses, appropriation date, and whether the water right is conditional or absolute.

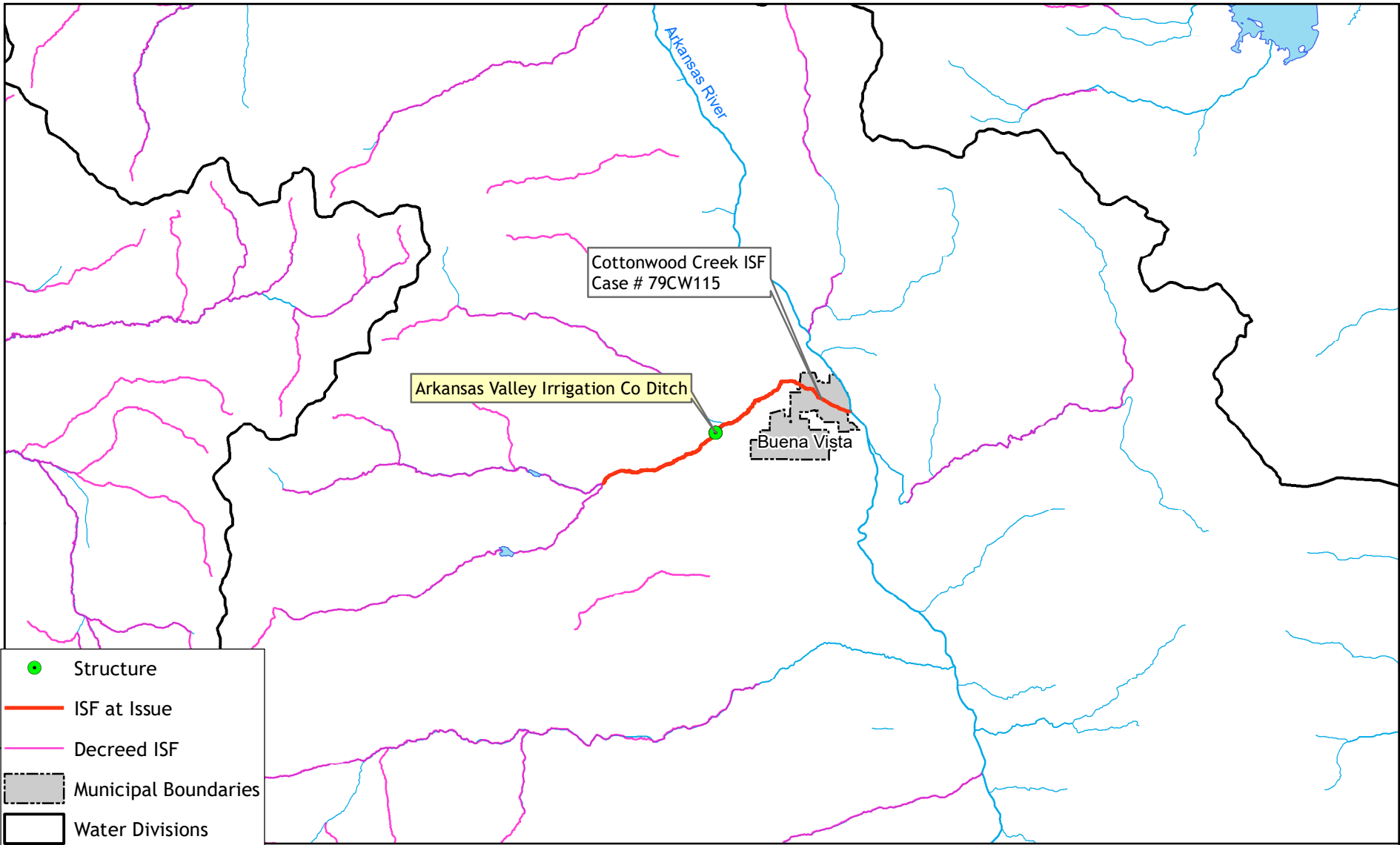
- The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.

Other Objectors

Statements of Opposition were also filed by Board of County Commissioners of Chaffee County, City of Aurora, City of Colorado Springs-Colorado Springs Utilities, City of Salida, Colorado Parks and Wildlife, Fountain Mutual Irrigation Company, Penrose Water District, Sailor Investments, L.L.P., Southeastern Colorado Water Conservancy District, St. Charles Mesa Water District, State and Division Engineers, Timothy John Courtney and Monika G. Courtney, Town of Buena Vista, Colorado, Upper Arkansas Water Conservancy District, Widefield Water and Sanitation District, Woodmoor Water and Sanitation District No. 1.

Attorney Representing CWCB

Marc D. Sarmiento, Assistant Attorney General, is assigned to this case and can be contacted at marc.sarmiento@coag.gov, or 720-508-6429.



- Structure
- ISF at Issue
- Decreed ISF
- Municipal Boundaries
- Water Divisions

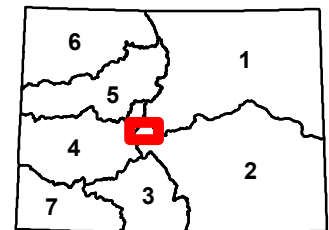


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

November 17 - 18, 2021 CWCB Board Meeting
 Consent Agenda Item 1.b Statement of Opposition
 Case No. 21CW3044 (Division 2)
 Triview Metropolitan District

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DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING August 2021.
(This publication can be viewed in its entirety on the state court website at:
www.courts.state.co.us).

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 August 2021, 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. 21CW3044: TRIVIEW METROPOLITAN DISTRICT Acting by and through its Water and Wastewater Enterprise (“Applicant or Triview”), 16055 Old Forest Point. Ste. 300 Monument. CO 80132 (Please address all pleadings and inquiries in this matter to Applicant’s attorneys: Steven O. Sims, Reg. No. 9961 and Dulcinea Z. Hanuschak, Reg. No. 44342 of Brownstein Hyatt Farber Schreck, LLP at 410 Seventeenth Street, Suite 2200, Denver, CO 80202-4432, Phone: 303.223.1100)
Amended Application for Change of Water Rights
CHAFFEE COUNTY.

Applicant, Triview Metropolitan District Acting by and through its Water and Wastewater Enterprise (“Applicant or Triview”) at the request of the Water Referee and prior to the time any statement of opposition or any other responsive pleading was filed to the original application filed August 31, 2021, pursuant to CRCP 15(a) states this amended application: **3. Name of Subject Water Rights.** The Arkansas Valley Irrigation Canal Company’s Ditch. (“Subject Water Rights”) **4. Name of Structure.** Ark Valley Irrigation Co (1100655). **5. Original Decree:** The Ark Valley Irrigation Co was decreed in Case No. CA 1127 on June 19, 1890 with an appropriation date of May 1, 1880 for 18.05c.f.s. a. The original point of diversion was described in CA 1127 as “the headgate is located on the south bank of [Cottonwood Creek] about 100 feet above the junction of the North and South forks of said Stream, Chaffee County.” **6. Point of Diversion:** The headgate currently is located on the South bank of Cottonwood Creek about 1600 feet upstream of the confluence between Cottonwood Creek and North Cottonwood Creek. The point of diversion was moved upstream pursuant to the provisions of § 37-86-111 C.R.S. a. Current UTM location. UTM Zone 13, NAD83, X-48782.79082, Y 4394670.81106 b. Current PLSS Location. SW ¼, NE ¼ of the SW ¼ of Section 13, T 14 S, R. 79 W. 6th P.M. in Chaffee, County, Colorado. **7. Source.** Cottonwood Creek a tributary of the Arkansas River, in Chaffee County, Colorado. **8. Decreed Uses.** Irrigation. **9. Amount of Water Rights to be changed.** 18.05 c.f.s. **10. Historical Use.** The Subject Water Rights historically irrigated up to 432 acres of grass hay and pasture. A map showing said irrigated land is attached as Appendix A. **11. Augmentation Stations.** Return flows, replacements and/or water representing the historical consumptive use of

Attachment
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the Subject Water Rights shall be measured and returned to the Arkansas River and/or Cottonwood Creek through one of more augmentation stations at locations to be described in the proposed decree that are designed to prevent injury to other vested water rights. **12. Diversion Records, Map of Historically Irrigated Lands, Method of Analysis.** See **Appendix A** map of Historically Irrigated Lands attached to the application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A summary of records of diversions of The Arkansas Valley Irrigation Canal Company's Ditch is attached as **Appendix B**. Applicant will add diversion records for irrigation years 2020 and 2021 to **Appendix B** when those records are added to the State Engineer records. Applicant will evaluate the Subject Water Rights using a modified Blaney-Criddle ET method over a study period of 1970 to 2021, excluding 1986 when no records were available. **13. Proposed Change:** Triview seeks approval of the following changes of type and place of use: a. Types of Use. Municipal, domestic, agricultural, energy production, manufacturing, mechanical and industrial purposes including, but not limited to: fire protection, irrigation, commercial, recreation, fish and wildlife propagation, reservoir evaporation replacement, creation and maintenance and/or enhancement of wetlands, maintenance of storage reserves, recharge of Denver Basin aquifers, stock watering, reclamation, revegetation, dust suppression, water treatment and supply, wastewater treatment, storage for such uses, and use as a supply or substitute supply for augmentation, replacement, exchanges decreed or to be decreed, and substitute supply plans. All uses include reuse and successive reuse to extinction for the above purposes, or disposition of effluent for the above purposes b. Places of Use. Triview seeks to change the place of use for the subject water rights to Triview's current and future service areas served by its municipal water supply and water reuse systems, including areas served by its connections with other systems, and by any current or future water supply contracts or obligations of Triview. Triview may also use the water to meet its replacement or delivery obligations in Water Division 2 including for replacement of depletions on the Arkansas River and its tributaries, including but not limited to Monument Creek, Fountain Creek, Cottonwood Creek and the South Arkansas River. Triview's service area has changed from time to time and will continue to do so. c. Stored Water. After diversion and prior to initial use by Triview, water diverted pursuant to the Subject Water Rights may be stored at any of the locations set forth below in paragraph 13 d. Such water may be delivered to storage by means of the use of natural stream channels, component facilities of Triview's future Fountain Creek and Arkansas River diversion and conveyance system and/or any points of diversion authorized in the respective decrees for the storage structures Triview is authorized to use. Reusable effluent or return flows resulting from the initial use for the changed uses of the historical consumptive use component of the water diverted pursuant to the Subject Water Rights may be stored in any reservoir Triview is authorized to use. d. Places of Storage. i. Big Johnson Reservoir a 10,000 AF reservoir located under the Fountain Mutual Canal in Sections 8, 17 and 18, T 15S, R 65W 6th P.M in El Paso County, Colorado. ii. Stonewall Springs Reservoir Complex ("SSRC"), a 19,537-acre foot complex of reservoirs, filled by the Excelsior Ditch in Pueblo County, Colorado in Sections 35 and 36, T 20S, R 63 W 6th P.M. iii. Pueblo Reservoir, as operated as part of the Frypan-Arkansas project by the United States Bureau of Reclamation and the Southeastern Colorado Water Conservancy District, located on-channel on the Arkansas River in Pueblo County, Colorado located in Section 24, T20S, R 67W, Sections 19, 25, 29, 33, 34, 35 and 36 T 20S, R 66W, Sections 1, 2, 3, 10 and 11 T 21S, R 66W in the 6th P.M. Triview has an application pending for a long-term Excess Storage Capacity contract

for the storage of 999 acre feet in Pueblo Reservoir. **14. Return Flow Replacement.** In connection with the change of the Subject Water Rights, Triview will have return flow replacement obligations resulting from the historical use of the Subject Water Rights. Triview will replace return flows at times when there is a call or unsatisfied instream flow on Cottonwood Creek and/or the Arkansas River senior to August 31, 2021 in a location that could result in the curtailment of the Arkansas Valley Irrigation Canal Company's Ditch. In addition to water diverted pursuant to the priorities identified in Paragraph 5, Triview may use fully consumable water diverted pursuant to the water rights adjudicated or changed as set forth in Appendix C to this application to meet its obligations ("Replacement Sources"). Triview may also use water derived from water rights in addition to those set forth in Appendix C provided the water so released is fully consumable and provided Triview has given notice of its intent to use such water as required in the decree entered in this case. **15. Lack of Injury.** Triview will propose terms and conditions in the final decree so that this change of water right will not injuriously affect the owner of or persons entitled to use of water under a vested water right or a decreed conditional water right. **16. Names and Addresses of Owners of Structures.** a. Triview owns the headgate and ditch works that diverts and conveys the Arkansas Valley Irrigation Canal Company's Ditch. b. The headgate of the Arkansas Valley Irrigation Canal Company's Ditch is located on land owned by Hargrove Family Trust, 28395 County Road 361, PO Box 365, Buena Vista, CO 81211. c. The Excelsior Irrigating Company owns the Excelsior Ditch of which Triview owns an approximately 40% share in said ditch, allowing diversion of water to the SSRC. The address of the Excelsior Irrigating Company is P.O. Box 11446 Pueblo, CO 81001 d. The headgate of the Excelsior Ditch is located on land owned by Kirkland Property Holdings LLC, P.O. Box 580, Rye, CO 81069-0580. e. Triview owns the land upon which the storage facilities known as the SSRC are/will be constructed, and the storage structures and rights in the SSRC are owned by the Stonewall Springs Reservoir Company. f. The Bureau of Reclamation owns Pueblo Reservoir. The Bureau of Reclamation Eastern Colorado Office is 11056 W. County Rd 18E; Loveland, CO 80537-9711. g. The Fountain Mutual Irrigation Company ("FMIC") owns the Big Johnson Reservoir and the Fountain Mutual Ditch through which water may be delivered to Big Johnson Reservoir. Triview owns approximately 17.6% of the shares in FMIC. FMIC's address is P.O. Box 75292, Colorado Springs, CO 80970. **WHEREFORE**, the Applicant requests that the Amended Application for Change of Water Rights be approved as requested herein and for such other relief and conditions that the Court deems appropriate

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 October 2021, (forms available at Clerk's office or at 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.

Witness my hand and the seal of this Court this 8th day of September 2021.

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749

(Court seal)
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