

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

Bill Ritter, Jr.
Governor

FROM: Linda J. Bassi, Chief
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CWCB Director

DATE: May 6, 2009

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CWCB Deputy Director

SUBJECT: **Agenda Item No. 8, May 19-20, 2009 Board Meeting**
Stream and Lake Protection Section – Roaring Fork River Basin Proposed
Water Acquisition from Pitkin County

At its January 2009 meeting, Staff presented an offer to the Board from the Pitkin County Board of County Commissioners ("Pitkin County") of a long-term loan of a water right for instream flow ("ISF") use on Maroon Creek and the Roaring Fork River in Pitkin County. The instrument of the loan would be a revocable trust ("Trust Agreement"), wherein Pitkin County is the Settlor and CWCB is the Trustee. The first component of the proposed long-term loan includes 4.3 cfs in the Stapleton Brothers Ditch for ISF use on Maroon Creek and the Roaring Fork River. The Trust Agreement contemplates an additional component that includes approximately 34 additional water rights in the Roaring Fork Basin that may be used for ISF purposes. Pursuant to ISF Rule 6m.(4), the Basalt Water Conservancy District and the Starwood Metropolitan District requested a hearing on the proposed acquisition of the 4.3 cfs of the Stapleton Brothers Ditch water right. At its March 2009 meeting, the Board granted the requests for hearing, appointed Deputy Attorney General Casey Shpall as Hearing Officer, and scheduled the hearing to be held in conjunction with the September 2009 CWCB meeting. Since the March CWCB meeting, staff and Pitkin County representatives met with the Colorado Division of Wildlife, Division of Water Resources and the parties to discuss issues raised concerning this proposal (listed below), and have identified a need for additional time to work on those issues and on data collection on the subject streams.

Staff Recommendation

Staff recommends that the Board reschedule the hearing on this proposed acquisition to be held in conjunction with the November 2009 Board meeting.

Discussion

Rescheduling the hearing to November will provide the parties with additional time to discuss numerous issues that concern this proposed acquisition, and will enable the CDOW to collect and analyze data related to using the acquired water to improve the natural environment to a reasonable degree. The issues raised by the parties are summarized generally below.

1. Water rights administration, enforcement and accounting issues.
2. Issues related to changing the Stapleton Brothers Ditch water right to add instream flow use as a decreed use, including re-quantification of historical consumptive use, Green Mountain Reservoir Historic User Pool protection, and return flow issues.
3. Potential impacts on other water rights within the subject ISF reaches on Maroon Creek and the Roaring Fork River.
4. Issues related to utilization of Colorado's compact entitlement, particularly pre-1922 water rights.
5. The extent to which the acquired water may be used to improve the natural environments of Maroon Creek and the Roaring Fork River to a reasonable degree.

At the July CWCB meeting, staff will provide the Board with the Hearing Officer's schedule of deadlines for written submissions pursuant to ISF Rule 6m.(5)(e).

Staff Recommendation

Staff recommends that the Board reschedule the hearing on this proposed acquisition to be held in conjunction with the November 2009 Board meeting.