

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



MEMORANDUM

TO: Colorado Water Conservation Board Members

FROM: Linda Bassi and Kaylea White
Stream and Lake Protection Section

DATE: September 3, 2009

RE: **Agenda No. 17, September 15-16, 2009 Board Meeting, – Request for Authorization to Proceed to Trial – Case No. 2--06CW32, Application of the Upper Arkansas Water Conservancy District**

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

This case is set for a five-day trial beginning on October 20, 2009. The parties are discussing settlement options and preparing for trial on a parallel track. Staff and the Attorney General's Office intend to discuss litigation strategy and settlement options with the Board in executive session, and will request authorization to proceed to trial in the event the parties are unable to settle the case.

Background

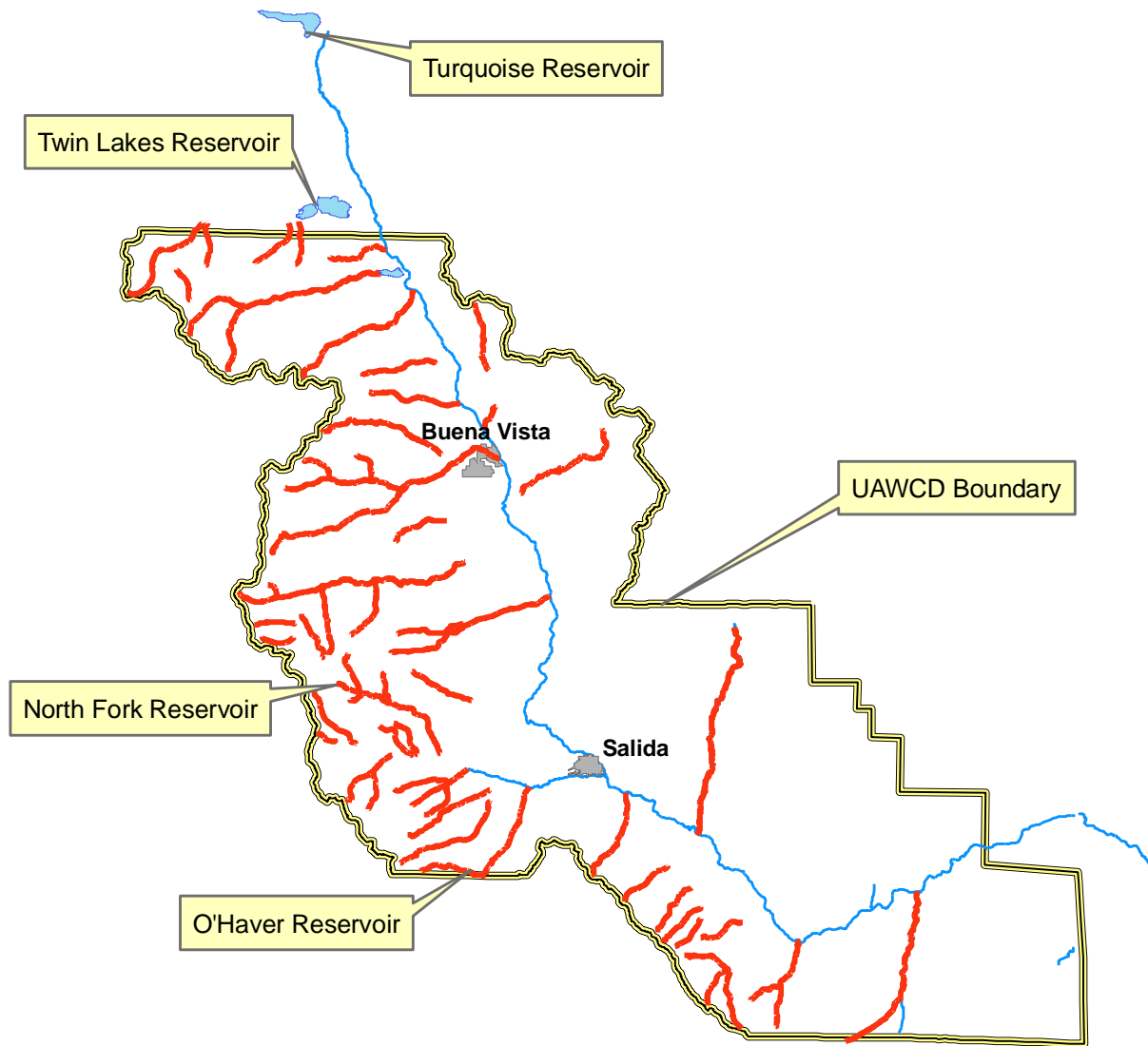
In this case, the Applicant seeks approval of an umbrella plan for augmentation to replace out-of-priority depletions from various structures located within the boundaries of the Upper Arkansas Water Conservancy District (UAWCD) in Chaffee and Fremont Counties. See attached map. This application seeks to supplement Applicant's previously decreed plans for augmentation by approving the use of augmentation water sources not already included in those plans and the augmentation of additional types of structures not already covered by those plans. UAWCD will replace its out-of-priority depletions with the District's senior water rights that include Twin Lakes, Fryingpan-Arkansas Project water, North Fork Reservoir, and O'Haver Reservoir. Exchanges are addressed in other water court cases.

The Board holds a number of instream flow water rights within the boundaries of the UAWCD that could be injured by the Applicant's proposed operation of its Plan for Augmentation.

Staff and the Attorney General's Office have proposed terms and conditions for inclusion in Applicant's decree that would protect the Board's instream flow water rights. At this time, it appears that the Applicant has verbally accepted those conceptual terms and conditions, but has not finalized the agreement in writing.

Recommendation

Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to proceed to trial to protect the Board's instream flow water rights in the event that Staff and the Attorney General's Office are unable to reach a settlement with the Applicant.



September 15-16, 2009 Board Meeting
Agenda Item 17; Authorization to Proceed to Trial
Case No. 2-06CW032; Upper Arkansas WCD

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