

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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MEMORANDUM

TO: Colorado Water Conservation Board Members

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

DATE: November 4, 2009

RE: **Agenda No. 15, September 16-18, 2009 Board Meeting, – Request for Authorization to Proceed to Trial – Case No. 3--08CW10, Application of Robert Gregg Sease**

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 three-day trial beginning on January 19, 2010. 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 for a change of water rights and a plan for augmentation to replace out-of-priority depletions from ponds located on the Applicant's property in Saguache County. See attached map. The Applicant intends to replace its out-of-priority depletions with Sheep Creek Ditch dry-up credits and transmountain water from the Tarbell Ditch. Because Applicant has not provided a proposed decree nor identified the proposed exchange reaches, the details of the plan are not yet clear.

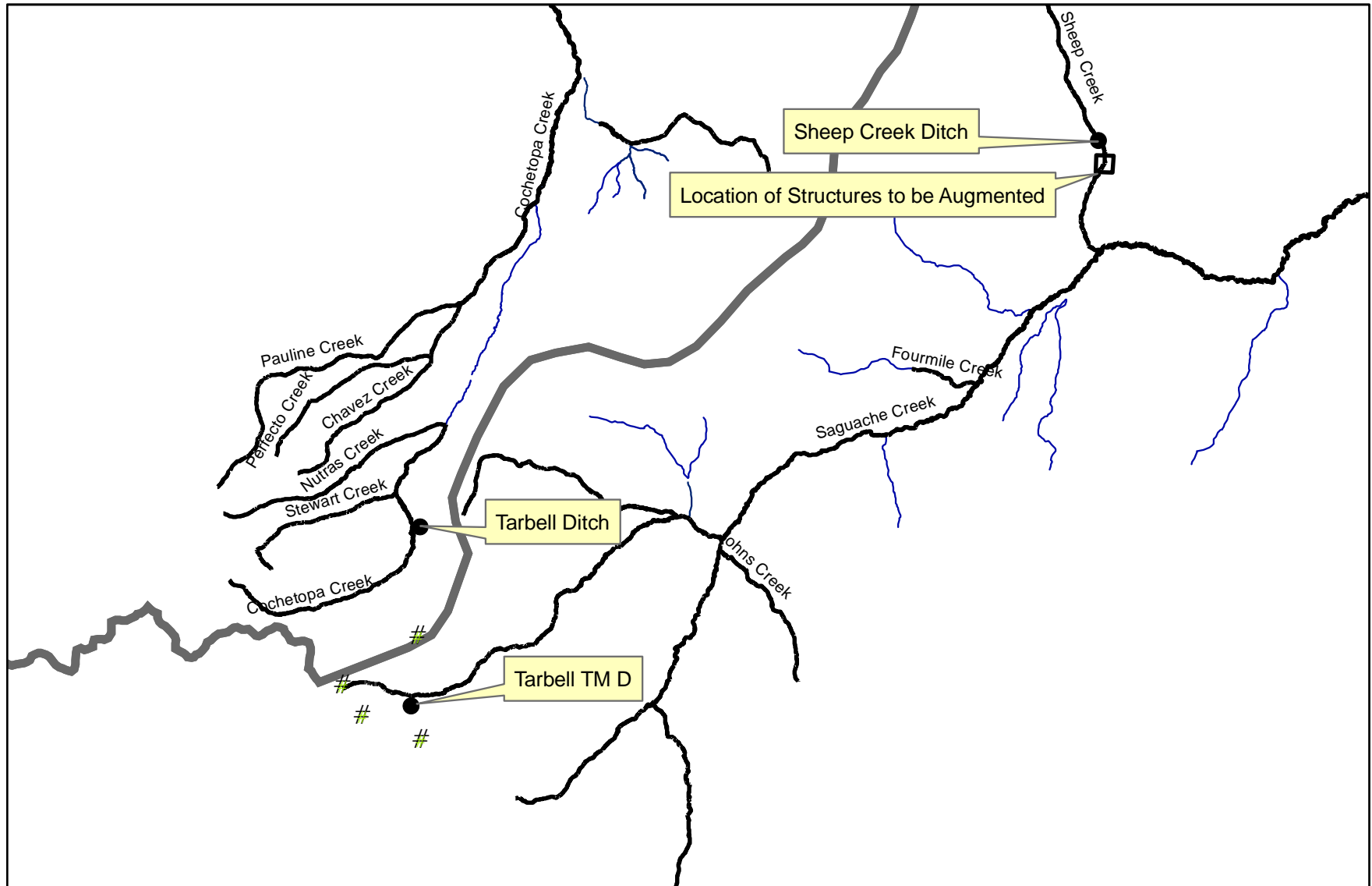
The Board holds instream flow water rights that could be injured by the Applicant's proposed change case and plan for Augmentation as follows:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
3-82CW226	Sheep Creek	2	10/7/82	Saguache Creek	Saguache
3-82CW208	Saguache Creek	8/5	10/7/82	Saguache Creek	Saguache

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. CWCB and DWR submitted 26(A)(2) expert reports on November 10, 2009.

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.



November 16-18, 2009 Board Meeting
 Agenda Item 15; Authorization to Proceed to Trial
 Case No. 3-08CW010; Robert Gregg Sease

