

***Case No. 4-05CW264***

***Application of Ranch Properties, LLC***

***Injury with Mitigation Proposal***

**Agenda Item #16**

CWCB Meeting

November 16-18,

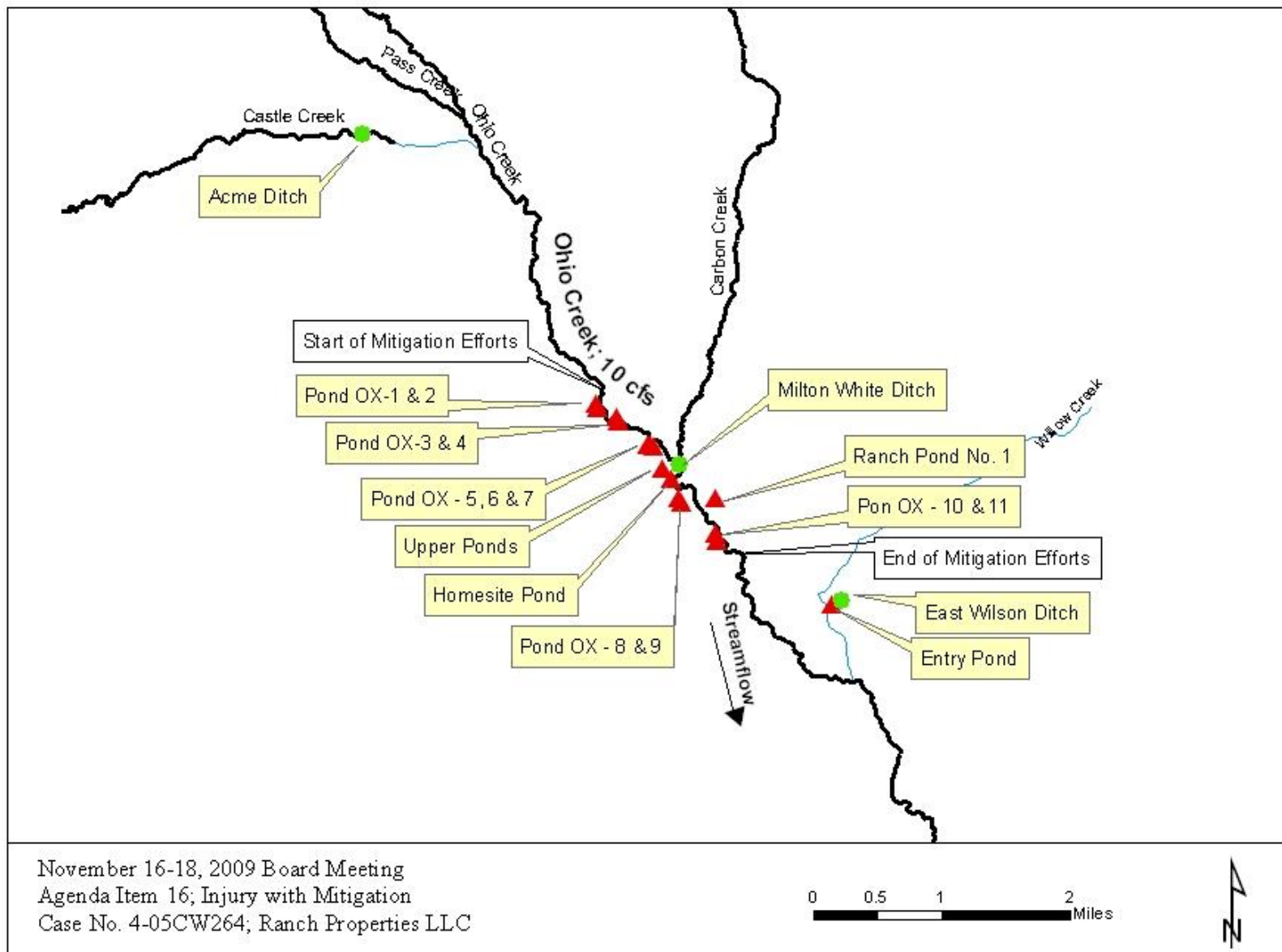
2009

# Injury with Mitigation (Rule 8i(3))

- Second meeting of two meeting process. First meeting was January 2009.
- This proposal will allow a small injury to the ISF water rights on Ohio Creek, tributary to the Gunnison River.
- Mitigation proposed by Applicant will enable the Board to continue to preserve the natural environment to a reasonable degree.

# Background

- Application is for approval of plan for augmentation to replace out-of-priority groundwater diversions resulting generally from a river restoration project:
  - Groundwater rights for pond evaporation
  - Plan for augmentation to replace out-of-priority depletions on Ohio Creek
    - Provide augmentation replacements from on-site ditch dry-up credits (irrigation season)
    - From Blue Mesa Reservoir via exchange reach to points of depletions (non-irrigation season)



## Background (continued)

- Board intervened in Nov 2008, filing a SOP to protect its ISF water rights on Ohio Creek after a draft proposed decree claimed no need to augment ISF
- This IWM proposal addresses impacts to Ohio Creek of a total 2.51 af/yr over a 5-month period
- Two Ohio Creek ISF's impacted are decreed for 10 & 12 cfs year round.

# Mitigation

- Improvements to Ohio Creek
  - A two mile reach of Ohio Creek restored for fish habitat and bank stabilization.
  - Designed to create and enhance pools, and reduce the channel's width to depth ratio.
- At the January 2009 Board meeting, George Fosha presented the Applicant's proposal

# Ohio Creek - Historic Stream Conditions

- High width/depth ratio.
  - Shallow and wide.
  - Higher temperatures, lack of deep water.
- Progressive bank erosion.
  - Translation of channel alignment.
  - Severe bank erosion.
  - High sediment loads.
- Lack of diversity in fishery.
  - Minimal deep, refuge water, particularly during low flows.
  - Warmer temperatures.
  - Loss of vegetative cover along stream banks







# Stream Restoration

- Extensive stream restoration (2004 – 2007).
  - Pursuant to 404 permits issued by Corps of Engineers. Reviewed by CDOW.
  - Channel modifications to reduce width/depth ratio.
  - Re-alignment to restore natural sinuosity.
  - Rock and log structures to reduce erosional stresses at stream banks and to enhance fishery habitat.
  - Re-connect stream meanders (“oxbows”). Excavate to provide deeper water for refuge during winter months and periods of high turbidity.
  - Project included modification of 2.05 miles of stream channel; installation of 115 rock/log structures; construction of 10 “oxbow” ponds and three riparian habitat ponds.







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- Estimated Stream Depletions: 10.48 ac-ft
  - Evaporation losses from new ponds
  - No adjustment for decreased stream surface area
- “Dry-Up” Credits from Acme Ditch: 7.97 ac-ft
- UGWCD Augmentation Credits: 2.51 ac-ft  
(Used below Ohio Creek)
- Potential Impact to CWCB ISF: 2.51 ac-ft

# Extent of Proposed Injury

## Ohio Creek ISF

- Proposal would allow a small injury to approx. 18 miles over two reaches of the Ohio Creek ISF water rights of 10 & 12 cfs.
- The stream will be depleted by up to 2.51 af of water from April 1 – May 31, and September 1 – December 31.
- Rate of stream depletion will vary from 0.014 to 0.005 cfs.



# Alternatives Considered

- Installation of an outlet structure on pond.  
Ponds intercept groundwater; DWR will not allow storage in a groundwater pond.
- Construction of new off-channel reservoir.  
Potential reservoir site is not near Creek, unlikely that small releases will reach Creek without freezing.

# CDOW evaluation

- CWCB staff met with CDOW staff regarding Applicant's proposal.
- Denver CDOW staff, Mark Uppendahl, provided his written analysis and approval of the mitigation plan

# Proposed Terms and Conditions

- Applicant will maintain the structures and improvements that provide mitigation.
- CWCB and CDOW will be allowed reasonable access to:
  - Inspect the mitigation structures and
  - Perform biological monitoring, if necessary

# Proposed Terms and Conditions (continued)

- Applicant shall install and maintain measuring devices as required by the DEO
- Applicant will agree to a retained jurisdiction provision in the final decree allowing the water court to enforce the provisions of the injury with mitigation stipulation as a water matter.



# Staff evaluation of proposal

- Applicant's habitat improvement project on Ohio Creek supports the conclusion that
  - the natural environment of Ohio Creek can continue to be preserved to a reasonable degree
  - with the proposed injury
  - as a result of the mitigation provided by Ranch Properties.
- The Division Engineer has confirmed there is no selective call or subordination issue in this case.

# Staff Recommendation

- Board determine that
  - the natural environment of Ohio Creek could be preserved to a reasonable degree
  - with the proposed injury to the ISF
  - So long as Ranch Properties provides the proposed mitigation and
  - agrees to appropriate terms and conditions.
- Approve the pretrial resolution of this case.