

# 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: May 10, 2010

RE: **Agenda No. 21a, May 18-19, 2010 Board Meeting, – Request for Authorization to Proceed to Trial – Case No. 5-08CW77, Application of Eagle River Water and Sanitation District**

Bill Ritter, Jr.  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

This case is set for a five-day trial beginning on August 9, 2010. A motion by the CWCB to reset this trial date due to a conflict with another trial in Division 3 is pending before the water court. 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. After executive session, Staff 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 a conditional surface water right and approval of a plan for augmentation. Applicant seeks to adjudicate a 7 cfs conditional water right from 5 alternate points of diversion for the Eagle River W&S District Wolcott Municipal Diversion for various uses. The augmentation plan is to replace out-of-priority depletions up to a maximum of 580 consumptive acre feet per year. The amounts and sources of replacement water are: up to 330 AF from Eagle Park Reservoir and up to 250 AF from Homestake Reservoir, which amounts are already assigned to other augmentation plans.

The CWCB holds the following instream flow water rights that could be injured by this application:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
5-80CW126	Eagle River	110/45	3/17/80	Eagle River	Eagle
5-80CW124	Eagle River	130/50	3/17/80	Eagle River	Eagle

Staff and the Attorney General's Office have submitted expert reports, responded to interrogatory requests, and provided surrebuttal reports. Staff and the Attorney General's Office are pursuing terms and conditions for inclusion in Applicant's decree that would protect the

Board's instream flow water rights. The primary outstanding issues for the CWCB include the proper accounting for the new irrigation use and lawn irrigation return flows, and the proper measurement and accounting for other intended uses and their depletions to the stream.

**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.

