

# 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:** May 10, 2010

**RE:** **Agenda No. 21b, May 18-19, 2010 Board Meeting, – Request for Authorization to Proceed to Trial – Case No. 5-05CW262, Application of the Town of Minturn**

Bill Ritter, Jr.  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

This case is set for a four-day trial beginning on July 22, 2010. The parties are discussing settlement options and preparing for trial on a parallel track. At this point, the Attorney General's Office believes that settlement is likely because the Applicant appears to have reached a settlement with the most aggressive opposers. In the event a settlement is not reached before May 18, 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 originally sought to change the point of diversion of the Minturn Water System Ditch, which diverts from Cross Creek, to two existing wells and one well to be constructed. Applicant subsequently dropped this claim. Applicant still seeks to change the points of diversion from some Minturn wells to other Minturn wells along Cross Creek. The primary outstanding issues are the terms and conditions needed to prevent injury to the CWCB's ISF water rights.

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
5-78W3795	Cross Creek	20/8	5/12/78	Eagle River	Eagle
5-78W3796	Eagle River	50/20	5/12/78	Eagle River	Eagle
5-80CW134	Eagle River	85/35	3/17/80	Eagle River	Eagle
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's expert reports are due by May 11, 2010. During negotiation meetings, Staff and the Attorney General's Office have verbally offered terms and conditions for inclusion in Applicant's decree that would protect the Board's instream flow water rights.

**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.

