

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. 21c, May 18-19, 2010 Board Meeting, – Request for Authorization to Proceed to Trial – Case No. 5--95CW272, Application of Colorado Springs and Aurora**

Bill Ritter, Jr.
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

This case is set for a seven-day trial beginning on June 23, 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. 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 conditional surface water rights, change of water rights, and approval of a plan for augmentation. This case has been termed "Homestake III." The most recent claim presented in negotiations is reduced from the application. In the application, Applicants sought a 30,000 acre-foot storage right in Blodgett Reservoir for various uses, a 90,000 acre-foot conditional aquifer storage right, a 175 cfs conditional groundwater right for 90,000 acre-feet per year, 400, 200, and 1,400 cfs conditional surface water rights, changes of conditional water rights, exchanges, and plans for augmentation including exchanges. However, in a recent stipulation with Eagle County, Applicants claimed a 9,316 acre-foot aquifer storage right in Blodgett, no aquifer storage right, a 30 cfs conditional groundwater right for 4,000 acre-feet per year, 1,400, 400, 200, and 300 cfs conditional surface water rights, changes of conditional water rights, and two plans for augmentation including exchanges.

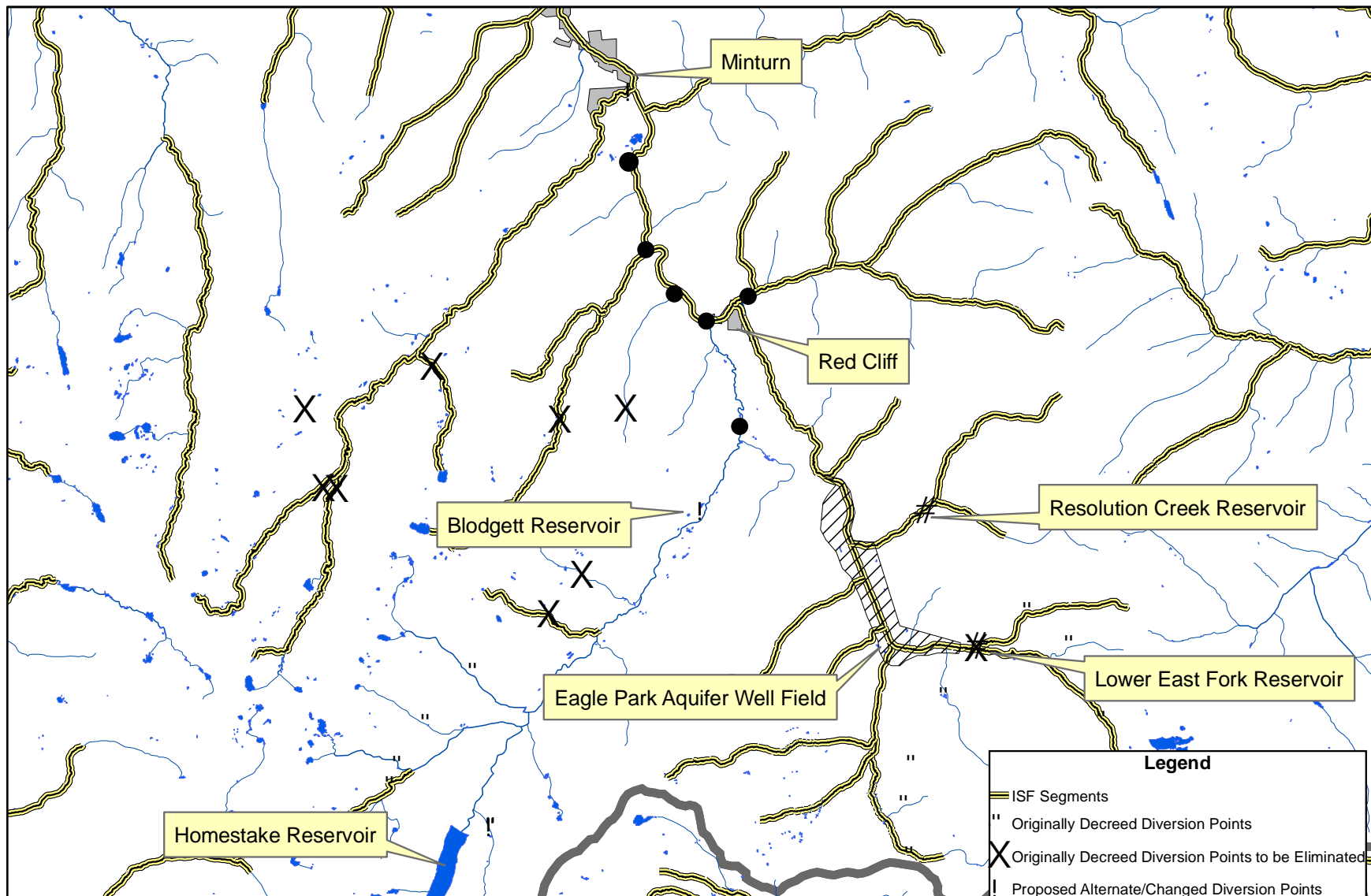
The CWCB holds instream flow water rights on the Eagle River, East Fork Eagle River, South Fork Eagle River, Rule Creek, Yoder Gulch, Turkey Creek, Resolution Creek, and Cross Creek that could be injured by the claims in this application.

Staff and the Attorney General's Office have submitted expert reports, and have been negotiating diligently with the Applicants. 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.

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.



May 18-19, 2010 Board Meeting
 Agenda Item 21c; Authorization to Proceed to Trial
 Case No. 1-95CW272; City of Colorado Springs & City of Aurora

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