



**Agenda Item #31**  
CWCB Meeting  
July 20-21, 2010

*Case No. 4-03CW108*

*Application of Upper  
Gunnison River Water  
Conservancy District*

*Injury with  
Mitigation Proposal*

# Applicant

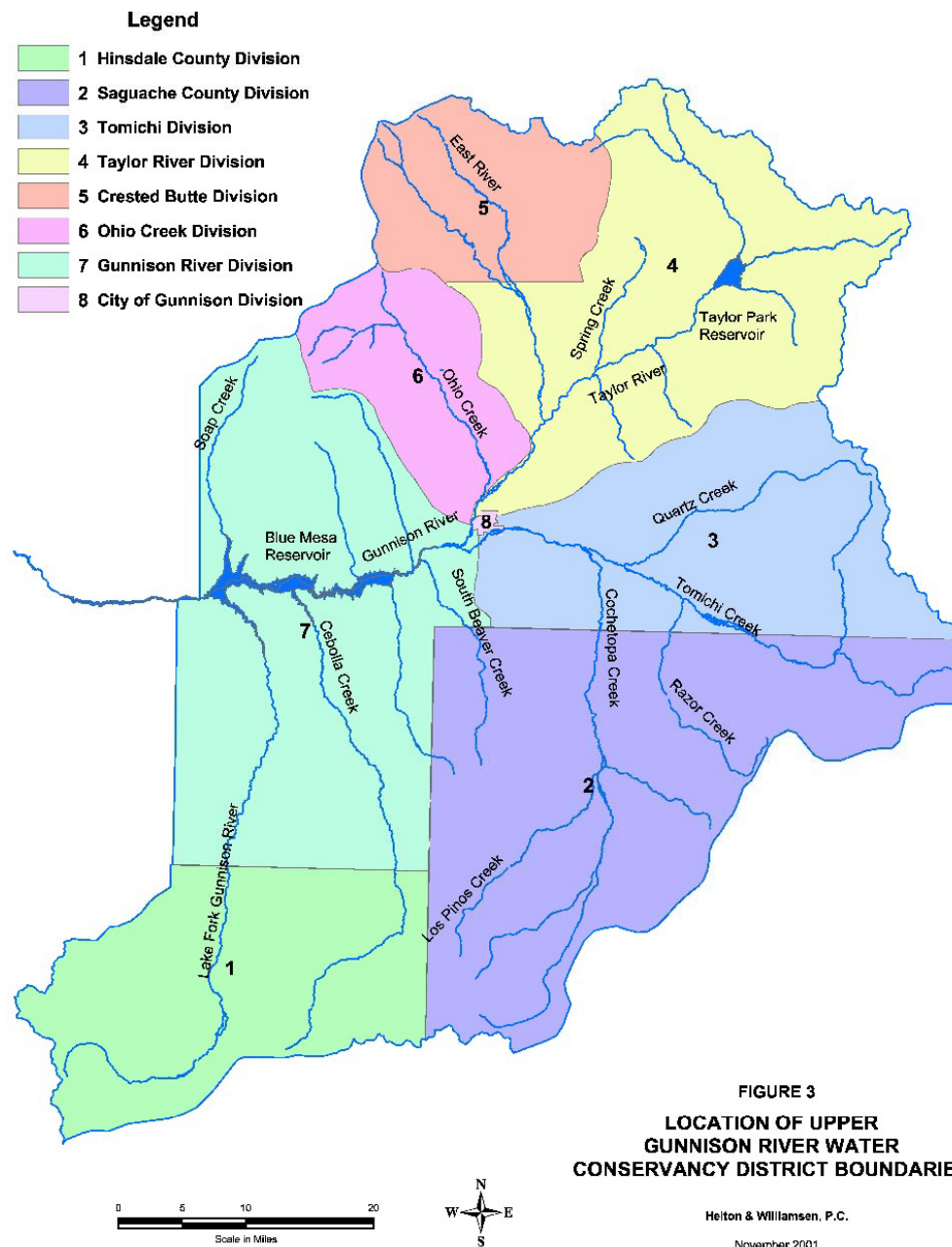
- The current Applicant is the Upper Gunnison River Water Conservancy District (UGRWCD)
- UGRWCD will transfer the rights to Lake San Cristobal Water Activity Enterprise (“the Enterprise”), consisting of Hinsdale County, the Town of Lake City and UGRWCD.
- The Enterprise will be subject to the terms and conditions of the stipulation and decree.

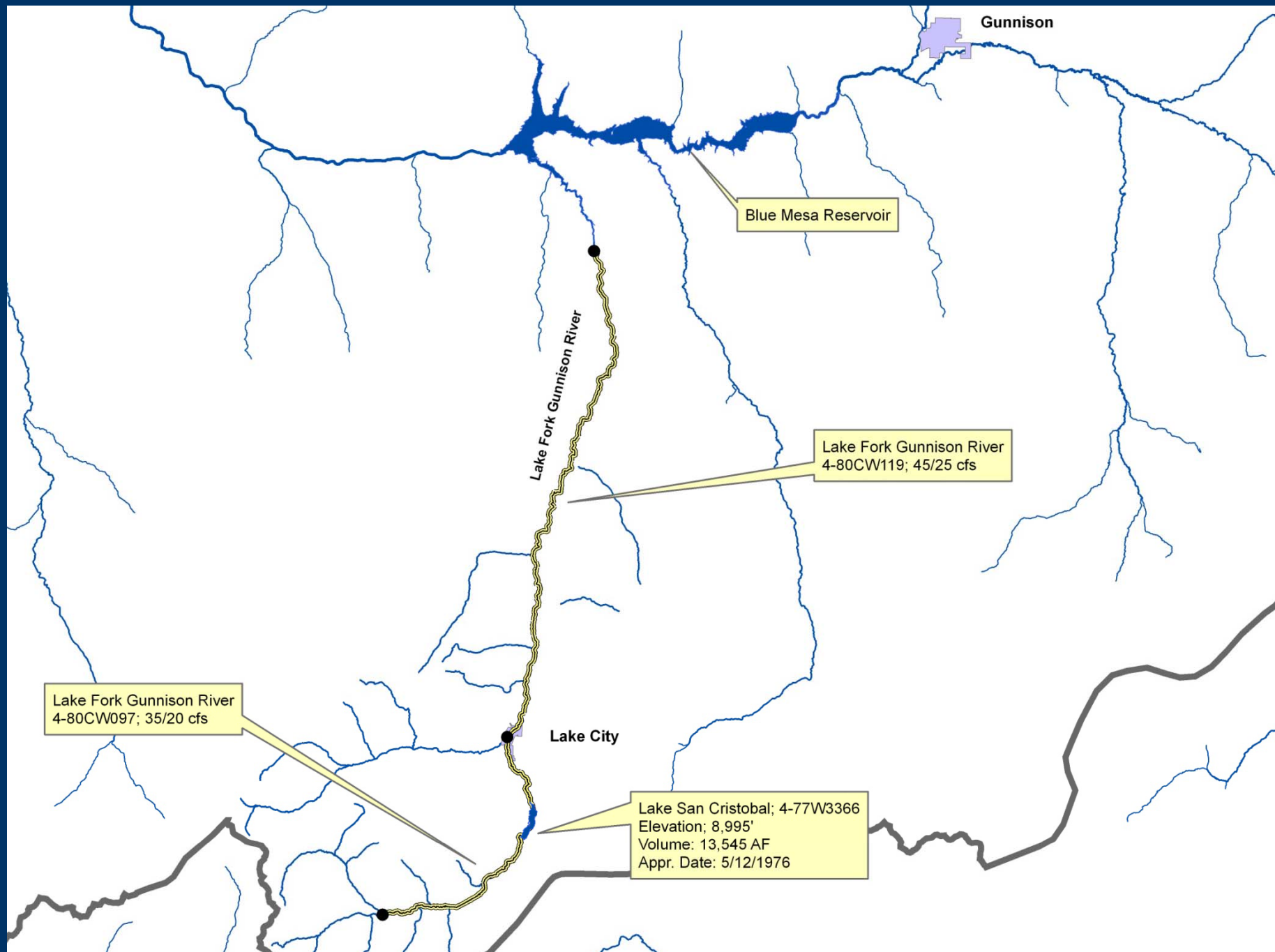
## Injury with Mitigation (Rule 8i(3))

- Small injury to the Board's NLL water right on Lake San Cristobal in the Lake Fork Gunnison River Basin
- Appears that mitigation proposed by Applicant will enable the Board to continue to preserve the natural environment to a reasonable degree despite the injury
- Second meeting of two-meeting process

# Application Background

- Application is for storage right and approval of plan for augmentation including exchange:
  - Conditional 950 acre-foot storage right in Lake San Cristobal
  - Plan for augmentation and exchange to replace out-of-priority depletions on Lake Fork and within the UGRWCD Boundary





## Extent of Proposed Injury

- Applicant's operation of the new Obermeyer gate structure would drop the lake level by as much as 3 feet below the Board's NLL water right
  - Will injure the water right by lowering the lake level below its decreed amount during augmentation releases
- Most of the augmentation water will be needed during the 5-month irrigation season and during dry years.



# Mitigation

- Improvements to Lake San Cristobal and the Lake Fork Gunnison River



1. Utilize the outlet structure to maintain the lake level at its natural decreed elevation as long as possible each year
2. Replace un-replaced OOP depletions on the Lake Fork Gunnison River
3. Applicant has agreed to dedicate 100 af/yr to CWCB for downstream ISF use until Applicant needs the stored water for augmentation



# Alternatives Considered

- Applicants considered a larger project that would have raised the lake level, which would have inundated the lake by 3 feet
- Inundation of the Board's NLL pursuant to ISF Rule 7
- Modification of the Board's NLL pursuant to ISF Rule 9

# CDOW evaluation

- CWCB and CDOW staff have met on several occasions and with Applicant regarding Applicant's proposal
- CDOW agrees that the proposed mitigation and operation plans mitigate injury to the NLL water right by benefitting the natural environment preserved by that right
- Mark Uppendahl, of CDOW, provided his recommendation in May, 2010 and is available today to answer questions

# Proposed Terms and Conditions

- The District will not store water in Lake San Cristobal under this Decree until the outlet structure is in place and fully operational, and the dedicated 100 acre-feet has been assigned to the CWCB, thus providing the agreed-upon mitigation measures.
- The outlet structure must be maintained permanently as a condition of making releases from Lake San Cristobal.
- CWCB and Colorado Division of Wildlife staff shall have inspection access.

# Proposed Terms and Conditions (continued)

- If the Enterprise ceases to maintain the mitigation measures, the CWCB will no longer accept the injury to the NLL Right.
- This court shall retain jurisdiction to enforce the terms of the settlement with the CWCB as a water matter.
- Additional terms and conditions may be added.

# Dedication of 100 acre-feet

- Dedicated water will be used by CWCB to bring its existing ISFs on the Lake Fork Gunnison River up to their decreed amounts
- Applicant and CWCB will enter into an agreement to stipulation regarding the dedicated water
- Decreed uses will be piscatorial, fishery, wildlife habitat and augmentation, which will allow the water to be used to augment the existing ISF water rights.
- If either ISF is short of its decreed amount, CWCB may request all of part of the 100 acre-feet to be released at a rate to be determined at CWCB's discretion.

# Dedication of 100 acre-feet (Duration)

- The 100 af will be available to CWCB for a period of not less than 20 years or until:
  - USBR terminates the districts water service contract of r Blue Mesa; and
  - Applicant's sales of Augmentation Certificates commit stored water in excess of 850 AF.
- The IWM will be reassessed after a period of 20 from the date of the decree to
  - Reassess impacts due to storage operations
  - Reassess whether the 100 af has mitigated for impacts and whether continued dedication of stored water is necessary to mitigate impacts.

# Staff Evaluation & Recommendation

- Determine that
  - the natural environment of Lake San Cristobal could be preserved to a reasonable degree
  - despite the proposed injury
  - if Applicant maintains the proposed mitigation and
  - agrees to appropriate terms and conditions.
- Approve the pretrial resolution of this case.