

# 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: September 1, 2010

RE: **Agenda No. 9a, September 13-15, 2010 Board Meeting, – Request for Authorization to Proceed to Trial – Case Nos. 5-99CW194 and 5-99CW195 (consolidated), Applications of the Town of Eagle**

Bill Ritter, Jr.  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

This case is set for a three-day trial beginning on November 17, 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 possible. However, in the event a settlement is not reached before September 14, 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 Applicants seek conditional surface water rights, absolute storage rights, change of water rights, and an approval of a plan for augmentation including exchange. The primary outstanding issues are ensuring that the plan for augmentation provides adequate replacement water during an instream flow call in both amount and at the proper location and that proper terms and conditions to prevent injury to the CWCB's ISF water rights are included.

The CWCB holds the following instream flow water rights that could be injured by these applications:

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
5-77W3625	Brush Creek	12	7/26/77	Eagle River	Eagle
5-77W3627	East Brush Creek	7/4	7/27/77	Eagle River	Eagle

The date for staff's expert reports has been extended twice to pursue settlement discussions, and no final due date has been set. 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 Applicants.

