

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. 9b, September 13-15, 2010 Board Meeting, – Request for Authorization to Proceed to Trial – Case Nos. 5-07CW225 and 5-06CW264 (consolidated), Applications of the Town of Minturn and Ginn Battle South, LLC, et al.**

Bill Ritter, Jr.
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

This case is set for a ten-day trial beginning on October 4, 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. 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, storage rights, groundwater rights and an approval of a plan for augmentation including exchange. Originally, one Applicant sought storage rights for on-channel reservoirs that would have inundated two of the Board's instream flow ("ISF") water rights, but these claims have been withdrawn. 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 ISF water rights that could be or could have been injured by these applications:

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Watershed	County
5-78W3771	*Willow Creek	1	5/12/78	Eagle River	Eagle
5-78W3815	*Turkey Creek	7	5/12/78	Eagle River	Eagle
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

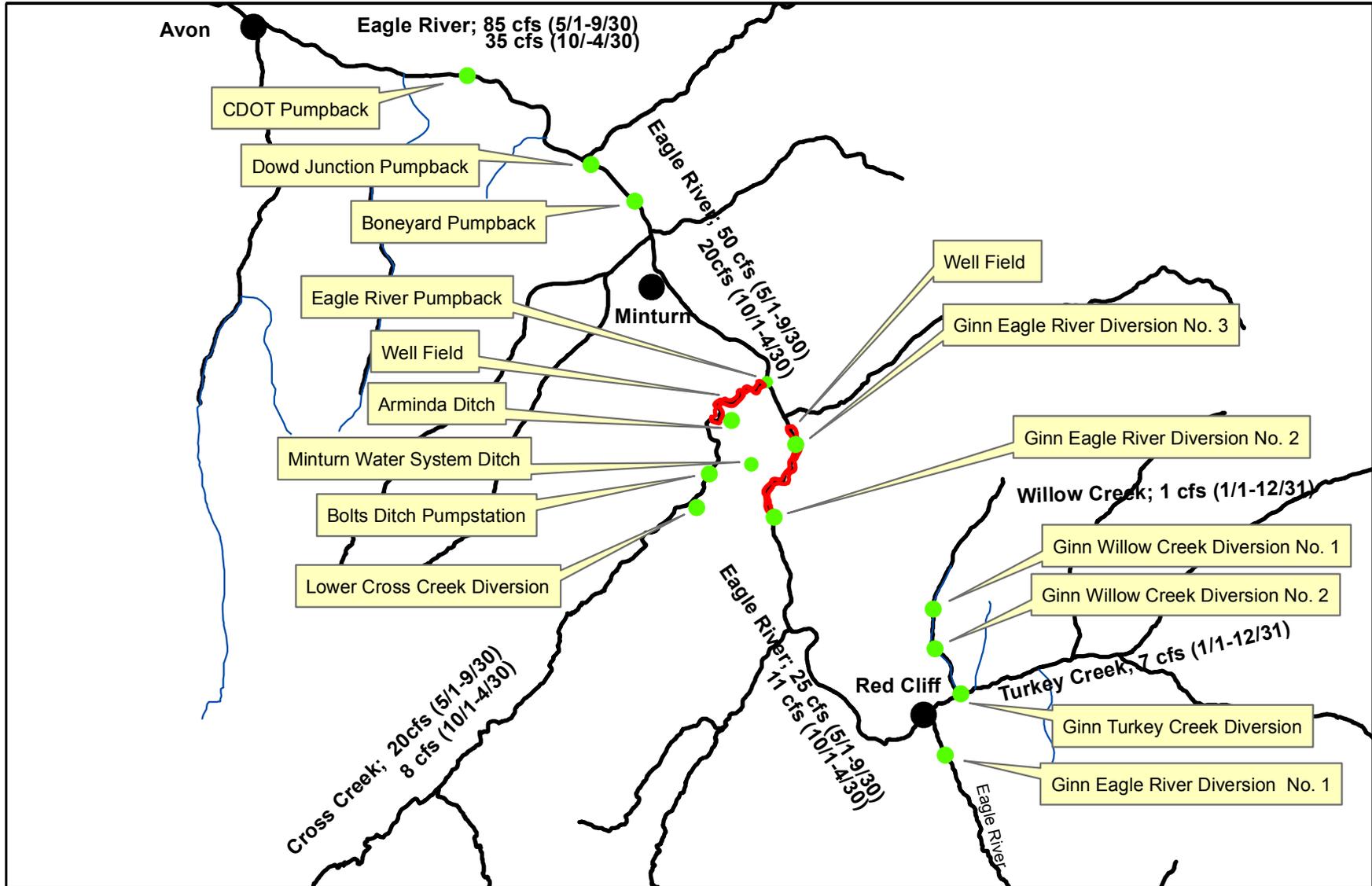
5-80CW126	Eagle River	110/45	3/17/80	Eagle River	Eagle
5-78W3811	*Eagle River	15/8	5/12/78	Eagle River	Eagle
5-78W3788	Eagle River	25/11	5/12/78	Eagle River	Eagle
5-80CW124	Eagle River	130/50	3/17/80	Eagle River	Eagle

* note. These ISFs will not be injured because of Applicant's withdrawal of storage claims.

The date for staff's expert reports has been extended to pursue settlement discussions. Expert reports are currently due by Sept 10, 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 ISF 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.



September 13-15, 2010 Board Meeting
 Agenda Item 9b; Authorization to Proceed to Trial
 Case No. 5-06CW264 & 5-07CW225 Consolidated;
 Town of Minturn & Ginn Battle South LLC & et. al.

