

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: January 12, 2011

RE: **Agenda Item 21, January 25-26, 2011 Board Meeting--
Request for Authorization to Proceed to Trial
Case No. 2-09CW073, Application of Donala Water & Sanitation District**

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

This case is set for an eight-day trial beginning on March 8, 2011. 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, Staff and the Attorney General's Office intend to discuss with the Board in executive session the litigation strategy and settlement options in the event the issues cannot be resolved before the trial date. 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 to change seven irrigation water rights to new year-round uses, new points of diversion and new places of storage in the upper Arkansas drainage. The new uses will include multiple exchanges, and require analyses of historical use and return flow patterns. The primary outstanding issues are ensuring that quantification of historical consumptive use credits, new diversions, and return flow obligations in time, amounts and locations do not result in injury to the CWCB's ISF water rights, and that proper terms and conditions to prevent injury are included in the decree.

The CWCB holds the following instream flow water rights that could be injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
2-77CW4654	Lake Fork Creek	15	1/19/1977	Arkansas Headwaters	Lake
2-77CW4655	Lake Fork Creek	20	1/19/1977	Arkansas Headwaters	Lake
2-77CW4645	Halfmoon Creek	7	1/19/1977	Arkansas Headwaters	Lake
2-75CW4271	Lake Creek	15	5/1/1975	Arkansas Headwaters	Lake

The Applicant recently provided an engineering report to objectors for review, and CWCB staff is in the process of refining the terms and conditions needed to protect the Board's instream flow water rights. The State Engineer is also an objector and has raised several issues, including concerns with calculated return flows from certain historically irrigated lands. Staff will continue to monitor resolution of those issues, but will move forward with proposed settlement terms. Staff and the AG's Office are hopeful that all issues will be resolved prior to the scheduled trial date.

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.

