

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 22, January 25-26, 2011 Board Meeting--
Request for Authorization to Proceed to Trial in Consolidated Case Nos.
5-07CW055 and 5-07CW054 into Case No. 5-07CW176: Applications of
Roaring Fork Club, L.P. consolidated with St Jude's Co. and Reno Cerise v.
Roaring Fork Club, L.L.C.**

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

The CWCB filed a statement of opposition in Case No. 5-07CW055 and the Court issued an Order in December 2009 consolidating this case into Case No. 5-07CW176. The consolidated case is set for an eight-day trial beginning on February 22, 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 reach a settlement.

Background

In Case No. 5-07CW055, the Applicant seeks a plan for augmentation to cover out-of-priority evaporative depletions for the Roaring Fork Club Ditch, as well as new water rights which would allow year-round diversion of 31 cfs from the Roaring Fork River. The Ditch is a flow-through structure which returns water to the Roaring Fork River approximately 3,100 feet downstream from the point of diversion. 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 instream flow water rights that could be injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
5-85CW639	Roaring Fork River	145/75	11/8/85	Roaring Fork River	Pitkin, Eagle
5-85CW646	Roaring Fork River	55/30	11/8/85	Roaring Fork River	Pitkin, Eagle

CWCB staff submitted its expert report on October 25, 2010, and has been negotiating with the Applicant. 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 on the Roaring Fork River. Staff and the AG's Office are optimistic that CWCB's concerns 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.

