

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: March 3, 2011

RE: **Agenda Item 12, March 15-16, 2011 Board Meeting--
Request for Authorization to Proceed to Trial
Case No. 6-07CW119, Application of Morrison Creek Metro
Water & Sanitation District**

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

This case is set for a four-day trial beginning on April 11, 2011. The parties are discussing settlement options and preparing for trial on a parallel track. At this point, Staff and the Attorney General's Office believe that settlement is possible. However, we 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 the point of diversion for Stagecoach Well 5 to several locations up from the currently decreed location. Staff believes that pumping at the new locations may deplete sections of Little Morrison Creek, and possibly other instream flow water rights in the vicinity that would not have been depleted by pumping at the original decreed location. Also, the proposed change in location may result in an expansion of diversions if water was not physically available at the original point of diversion. The primary outstanding issues are ensuring that pumping at the new locations does 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 right that could be injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
6-77W1324	Little Morrison Creek	1	9/23/77	Upper Yampa	Routt

The Applicant has provided a technical 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 right. The State Engineer is also an objector and has raised several issues concerning hydrogeology and the impact of pumping on surface streams. Staff will continue to monitor resolution of those issues, but will move forward with proposed settlement terms. At this time, Staff and the AG's Office are optimistic that all issues can 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.

