

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Linda Bassi and Kaylea White
Stream and Lake Protection Section

Mike King
DNR Executive Director

DATE: September 14, 2012

Jennifer L. Gimbel
CWCB Director

RE: **Agenda Item 7, September 27-28, 2012 Board Meeting--
Request for Authorization to Proceed to Trial
Consolidated Case Nos. 4-10CW164-167 and 169, Application of the Board of
Commissioners of Montrose County, Town of Nucla and Town of Naturita**

This case is set for a three-day trial beginning on November 12, 2012. The parties are discussing settlement options and preparing for trial on a parallel track. Staff and the Attorney General's Office intend to discuss litigation strategy and settlement options with the Board in executive session.

Recommendation

Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to proceed to trial to protect the Board's exclusive authority to adjudicate instream flow water rights in the event that Staff and the Attorney General's Office are unable to reach a settlement with the Applicants.

Background

In these consolidated cases, Applicants seek direct flow water rights, storage water rights and exchanges for domestic, industrial, and municipal use, augmentation and exchange, enhancement or maintenance of water quality, recreation, and piscatorial, together with the right to reuse, successive use, and disposition to extinction. The CWCB filed a motion to intervene on June 15, 2012 because the Applicants are seeking conditional water rights for storage that would include recreation and piscatorial uses not only within the reservoir, but also below the reservoir in the river to an unidentified point. The Court granted CWCB's motion to intervene on July 24, 2012. On July 27, 2012, the CWCB filed a Rule 56(h) motion for determination of questions of law asking the court to determine whether an applicant seeking a conditional water right to release stored water for in-channel uses must show that: (1) the applicant has identified a downstream legal beneficial use; (2) the applicant has an agreement with CWCB to provide the released water to a decreed instream flow water right; or (3) recreational in-channel diversion structures are in place to protect the use and applicant has met the statutory requirements for obtaining a recreational in-channel diversion water right. The motion has been fully briefed to the court.

