

DISTRICT COURT, WATER DIVISION 2 STATE OF COLORADO, PUEBLO COUNTY JUDICIAL BUILDING 320 WEST 10TH STREET PUEBLO, CO 81003	<p style="color: red;"> EFILED Document – District Court 2009CW89 CO Pueblo County District Court 10th JD Filing Date: Sep 9 2010 3:26PM MDT Filing ID: 33153911 Review Clerk: N/A </p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN MAXWELL CREEK, A NATURAL STREAM, IN THE WATERSHED OF ARKANSAS RIVER HEADWATERS, IN CHAFFEE COUNTY, COLORADO.	
	Case No. : 09CW89 Div. 2
FINDINGS AND RULING OF REFEREE AND DECREE OF THE WATER COURT	

This matter comes before the Court by Application of the Colorado Water Conservation Board, Department of Natural Resources, State of Colorado (“CWCB”). The Court, having considered all matters raised by the Application, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, Ruling of the Referee, Judgment and Decree:

FINDINGS OF FACT

1. The name and address of Applicant:

Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado 80203
(303) 866-3441
2. Applications: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on June 30, 2009.
3. Notice and Jurisdiction: All notices of this matter required by law have been fulfilled and the Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.
4. Objectors: No statements of opposition were filed in this case. The time for filing statements of opposition has expired.

5. Consultation. The Division Engineer filed a Summary of Consultation pursuant to § 37-92-302(4) C.R.S. dated June 7, 2010. The CWCB has addressed the Division Engineer's concerns set forth in the Summary of Consultation.

6. Name of Natural Stream: Maxwell Creek, tributary to the Arkansas River.

7. Location.

a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the headwaters in the vicinity of latitude 38° 45' 10.62"N and longitude 106° 14' 54.52"W as the upstream terminus and extending to the headgate of the O.W. Friskey Ditch at latitude 38° 46' 25.59"N and longitude 106° 11' 2.0"W as the downstream terminus, being a distance of approximately 4.0 miles. This segment can be located on the Buena Vista West U.S.G.S. quadrangle.

b. For administrative purposes only:

Upper Terminus =

SE SW S8 T15S R79W 6th PM

2230' East of the West Section Line, 210' North of the South Section Line

UTM North: 4290101.6 UTM East: 391515.3

Lower Terminus =

NW SW S1 T15S R79W 6th PM

35' East of the West Section Line, 2400' North of the South Section Line

UTM North: 4292338.0 UTM East: 397157.8

8. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.

9. Date of appropriation: The water was first applied to the above beneficial use on or before January 27, 2009. The appropriation was completed by the action of the Colorado Water Conservation Board under the provisions of C.R.S. § § 37-92-102(3) and 37-92-103(3), (4) and (10).

10. Amount of water claimed (ABSOLUTE): Instream flow of 3.3 cfs (June 1 – July 27), 1.5 cfs (July 28 – September 30), 1.0 cfs (October 1 – October 31), and 0.4 cfs (November 1 – May 31).

CONCLUSIONS OF LAW

11. Notice and Jurisdiction. The Water Court for Division 2 has jurisdiction over the subject matter of these proceedings and over all persons, owners of property and water rights that may be affected hereby, whether or not they have chosen to appear. The application in this matter and the resume publication of the application placed such persons on notice of the relief requested by the application and granted by this decree. §§37-92-203 and 302 C.R.S. (2008).

12. The CWCB has fulfilled all legal requirements for a decree for water rights including §§ 37-92-302, 304 and 305, C.R.S. (2008).

13. Burden of Proof. The CWCB has complied with all requirements, has met all standards and burdens of proof to adjudicate the water rights requested in the Application and is therefore entitled to a decree approving the requested water rights.

JUDGMENT AND DECREE

14. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.

15. The Application is granted and the Court hereby approves and decrees the absolute water rights described herein, in the amount of 3.3 cfs (June 1 – July 27), 1.5 cfs (July 28 – September 30), 1.0 cfs (October 1 – October 31), and 0.4 cfs (November 1 – May 31) in order to preserve the natural environment to a reasonable degree in the reach of Maxwell Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 27, 2009.

16. The priority herein awarded was filed in the water court in the year of 2009 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry of ruling. The Applicant shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

17. The Applicant shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

It is accordingly **ORDERED** that this Ruling shall be filed with the water clerk subject to judicial review.

It is further **ORDERED** that a copy of this Ruling shall be filed with the Division Engineer and the State Engineer.

Dated this 17th day of August, 2010.

BY THE REFEREE



Mardell DiDomenico
Water Referee
Water Division No. 2
State of Colorado

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court.

Dated this 9 day of September, 2010.

BY THE COURT



Dennis Maes
Water Judge
Water Division No. 2
State of Colorado