

DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, MONTROSE COUNTY JUSTICE CENTER 1200 N. GRAND AVE., BIN A MONTROSE, CO 81401	EFILED Document CO Montrose County District Court 7th JD Filing Date: May 4 2010 11:23AM MDT Filing ID: 30914968 Review Clerk: Darleen Cappannokeep
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN EAST ELK CREEK, A NATURAL STREAM, IN THE WATERSHED OF THE UPPER GUNNISON, (INCREASE) IN GUNNISON COUNTY, COLORADO.	
	<p style="text-align: center;">COURT USE ONLY</p> Case No. : 09CW79 Div. 4
<p style="text-align: center;">FINDINGS AND RULING OF REFEREE AND DECREE OF THE WATER COURT</p>	

This matter comes before the Court by Application of the Colorado Water Conservation Board (“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. Name of Applicant: Colorado Water Conservation Board

Address of Applicant: 1313 Sherman Street, Suite 721
Denver, CO 80203
(303) 866-3441

2. Application: 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. 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 October 20, 2009, recommending approval of the Application.

6. Name of natural stream: East Elk Creek tributary to Blue Mesa Reservoir.

7. Location:

a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the confluence with Bear Wallow Gulch at latitude 38° 32' 42.04"N and longitude 107° 10' 13.0"W as the upstream terminus and extending to the confluence with Blue Mesa Reservoir at latitude 38° 28' 58.43"N and longitude 107° 10' 19.58"W as the downstream terminus, being a distance of approximately 4.5 miles. This segment can be located on the Carpenter Ridge and West Elk Peak SW U.S.G.S. quadrangles.

b. For administrative purposes only:

Upper Terminus =

SW SE S34 T50N R3W NMPM

1431' West of the East Section Line, 564' North of the South Section Line
UTM North: 4268520.7 UTM East: 310864.1

Lower Terminus =

NW NE S27 T49N R3W NMPM

2196' West of the East Section Line, 625' South of the North Section Line
UTM North: 4261630.9 UTM East: 310542.0

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 on January 27, 2009 by the action of the Colorado Water Conservation Board under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2009).

10. Amount of water claimed (ABSOLUTE): Instream flow of 0.7 cfs (April 1 – October 31).

11. The Colorado Water Conservation Board has an existing instream flow water right on East Elk Creek from the headwaters to confluence with Blue Mesa Reservoir, in the amount of 1.5 cfs (1/1 - /12/31), decreed in case 84CW378 with an appropriation date of 5/4/1984. The flow rates decreed herein are in addition to the amount of the existing instream flow right.

CONCLUSIONS OF LAW

12. Notice and Jurisdiction. The Water Court for Division 4 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. (2009).

13. The CWCB has fulfilled all legal requirements for a decree for water rights including §§ 37-92-302, 304 and 305, C.R.S. (2009).

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

JUDGMENT AND DECREE

15. 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.

16. The Application is granted and the Court hereby approves and decrees the absolute water rights described herein, in the amount of 0.7 cfs (April 1 – October 31) in order to preserve the natural environment to a reasonable decree in the reach of East Elk Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 27, 2009.


17. 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 required 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 9th day of April, 2010.

BY THE REFEREE



S. Gregg Starway

Water Referee

Water Division No. 4

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 3rd day of May, 2010.

BY THE COURT

A handwritten signature in blue ink, appearing to read "J. Steven Patrick", written over a horizontal line.

J. Steven Patrick
Water Judge
Water Division No. 4
State of Colorado