



Granted

The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

James B. Boyd
District Court Judge
Date of Order attached
EFILED Document

CO Garfield County District Court 9th JD
Filing Date: Nov 15 2009 9:50AM MST
Filing ID: 28048431
Review Clerk: Kathy Hall

DISTRICT COURT, WATER DIVISION 5
STATE OF COLORADO
GARFIELD COUNTY COURTHOUSE
109 8th Street, #104
Glenwood Springs, CO 81601

Concerning The Application For Water Rights Of:

COLORADO WATER CONSERVATION BOARD, IN
BATTLEMENT CREEK, A NATURAL STREAM, IN
THE WATERSHED OF COLORADO HEADWATERS
PLATEAU,

IN GARFIELD COUNTY, COLORADO

▲ **COURT USE ONLY** ▲

Case No.: 08CW98

Div.: 5

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE,
JUDGMENT 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. Name, address and telephone number of Applicant:

Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado, 80203
(303) 866 – 3441

2. Application: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on July 31, 2008.

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 have been 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 June 24, 2009. The CWCB has addressed the Division Engineer's concerns set forth in the Summary of Consultation.
6. Name of Natural Stream. Battlement Creek, tributary to the Colorado River.
7. Location.
 - a. The natural stream channel from the outlet of Battlement Reservoir at latitude 39° 22' 29.98"N and longitude 107° 56' 15.5"W as the upstream terminus and extending to the headgate of Battlement Ditch at latitude 39° 26' 10.01"N and longitude 107° 58' 42.44"W as the downstream terminus, being a distance of approximately 5.15 miles. This segment can be located on the Rulison U.S.G.S.quadrangle.
 - b. For administrative purposes only:

Upper Terminus =
NE SE S12 T8S R95W 6th PM
930' West of the East Section Line
1540' North of the South Section Line
UTM North: 4362508.9 UTM East: 246951.1

Lower Terminus =
NW NE S15 T7S R95W 6th PM
1170' West of the East Section Line
2160' North of the South Section Line
UTM North: 4369409 UTM East: 243658.5
8. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
9. The water was first applied to the above beneficial use on or before January 23, 2008. The appropriation was completed on January 23, 2008 by the action of the Colorado Water Conservation Board under the provisions of sections 37-92-102(3), (4) and (10) C.R.S.

10. Amount of water claimed (ABSOLUTE): Instream flow of 6.3 cfs (April 1 – June 30), 3.5 cfs (July 1 – July 31), 1.5 cfs (August 1 – March 31).

CONCLUSIONS OF LAW

11. Notice and Jurisdiction. The Water Court for Division 5 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

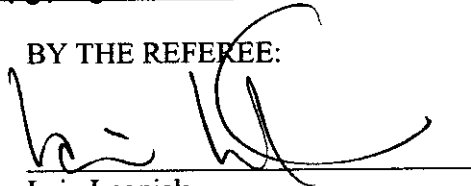
14. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.
15. The Application is granted and the Court hereby approves and decrees the absolute water rights described herein, in the amount of 6.3 cfs (April 1 – June 30), 3.5 cfs (July 1 – July 31), 1.5 cfs (August 1 – March 31) in order to preserve the natural environment to a reasonable degree in the reach of Battlement Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 23, 2008.
16. The priority herein awarded was filed in the water court in the year of 2008 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 the 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.

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 September, 2009.

BY THE REFEREE:



Lain Leoniak
Water Referee
Water Division No. 5
State of Colorado

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

Dated this _____ day of _____, 2009.

BY THE COURT

Water Judge
Water Division No. 5
State of Colorado

This document constitutes a ruling of the court and should be treated as such.

Current Date: Nov 15, 2009

Case Number: 2008CW98

Case Name: In the interest of: COLORADO WATER CONSERVATION BOARD

/s/ **Judge James B Boyd**