



# 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  
**FILED Document**

**CO Garfield County District Court 9th JD**

**Filing Date: Oct 7 2009 11:58AM MDT**

**Filing ID: 27448932**

**Review Clerk: Kathy Hall**

DISTRICT COURT, WATER DIVISION 5  
STATE OF COLORADO,  
GARFIELD COUNTY COURTHOUSE  
109 8<sup>th</sup> Street, Suite 104  
Glenwood Springs, CO 81601

**Concerning the Application for Water Rights of:**  
COLORADO WATER CONSERVATION BOARD,  
IN MULE CREEK, A NATURAL STREAM,  
IN THE WATERSHED OF COLORADO  
HEADWATERS,

IN GRAND COUNTY, COLORADO

**COURT USE ONLY**

Case No. : 08CW95

Div. 5

**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 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 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 June 24, 2009. The CWCB has addressed the Division Engineer's concerns set forth in the Summary of Consultation.
6. Name of Natural Stream: Mule Creek, tributary to Lost Creek tributary to Williams Fork River tributary to Colorado River.
7. Location.
- a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the confluence with South Fork Mule Creek at latitude 39° 53' 46.78"N and longitude 106° 8' 54.72"W as the upstream terminus and extending to the confluence with Lost Creek at latitude 39° 55' 16.12"N and longitude 106° 7' 33.44"W as the downstream terminus, being a distance of approximately 2.25 miles. This segment can be located on the Battle Mountain U.S.G.S. quadrangle.
  - b. For administrative purposes only:  
Upper Terminus =  
S8 T2S R78W 6<sup>th</sup> PM  
UTM North: 4416882.1 UTM East: 401812.3  
  
Lower Terminus =  
SW SW S28 T1S R78W 6<sup>th</sup> PM  
1200' East of the West Section Line, 60' North of the South Section Line  
UTM North: 4419611.9 UTM East: 403777.2
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 23, 2008. 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 1.2 cfs (April 1 - October 31), and 1.0 cfs (November 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 1.2 cfs (April 1 - October 31), and 1.0 cfs (November 1 - March 31) in order to preserve the natural environment to a reasonable degree in the reach of Mule Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 23, 2008.

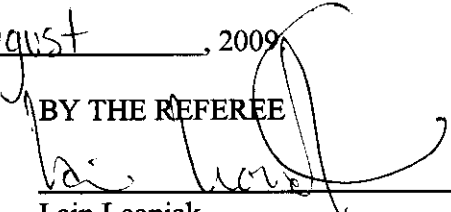
16. The priority herein awarded was filed in the water court in the year of 2008 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry 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 7<sup>th</sup> day of August, 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 the Judgment and Decree of this Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

BY THE COURT

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James B. Boyd  
Water Judge  
Water Division No. 5  
State of Colorado