



Granted

The moving party is hereby ORDERED to provide a copy of this Order to any 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 14 2010 4:34PM MST

Filing ID: 34334284

Review Clerk: Kathy Hall

STATE OF COLORADO,
GARFIELD COUNTY COURTHOUSE
109 8th Street, Suite 104
Glenwood Springs, CO 81601

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

IN GRAND COUNTY, COLORADO

COURT USE ONLY

Case No. : 09CW63

Div. 5

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE,
JUDGMENT AND DECREE OF THE WATER COURT**

This matter comes before the Water Referee by Application of the Colorado Water Conservation Board, Department of Natural Resources, State of Colorado ("CWCB") for a water right to preserve the natural environment to a reasonable degree. The Application was filed on June 30, 2009. The Application was thereafter referred to the Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court in accordance with Article 92, Chapter 37, C.R.S., known as the Water Rights Determination and Administration Act of 1969.

The undersigned Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, having consulted with the Division Engineer, and having become fully advised with respect to the subject matter in the Application, does hereby make the following Findings of Fact, Conclusions of Law, Judgment and Decree in this matter:

FINDINGS OF FACT

1. The statements in the Application are true.
2. Name and address of Applicant:

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

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 C.R.S. § 37-92-302(4) dated October 1, 2009. The CWCB provided a response to the Summary of Consultation on July 29, 2010. The Referee has considered these documents.
6. Name of Natural Stream: Troublesome Creek, tributary to the 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 Glomerate Creek at latitude 40° 17' 9.11"N and longitude 106° 17' 50.76"W as the upstream terminus and extending to the confluence with Rabbit Ears Creek at latitude 40° 15' 45.93"N and longitude 106° 19' 6.45"W as the downstream terminus, being a distance of approximately 2.2 miles. This segment can be located on the Hyannis Peak U.S.G.S. quadrangle. See Exhibit.
 - b. For administrative purposes only:
Upper Terminus =
SW NE S25 T4N R80W 6th PM
1675' West of the East Section Line
1365' South of the North Section Line
UTM North: 4460293.5 UTM East: 389713.2

Lower Terminus =
SW SE S35 T4N R80W 6th PM
2410' West of the East Section Line
695' North of the South Section Line
UTM North: 4457755.2 UTM East: 387887.6
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 on January 27, 2009 under the provisions of C.R.S. §§ 37-92-102(3) and 37-92-103(3), (4) and (10).
10. Amount of Water claimed: Instream flow of 5.1 cfs (April 1 - October 31),

and 2.8 cfs (November 1 – March 31), absolute.

CONCLUSIONS OF LAW

11. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
12. 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. C.R.S. §§ 37-92-203 and 302.
13. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
14. 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

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 5.1 cfs (April 1 - October 31) and 2.8 cfs (November 1 – March 31) in order to preserve the natural environment to a reasonable degree in the reach of Troublesome Creek, tributary to the Colorado River, between the upstream and downstream termini 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.
18. 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 28 day of September, 2010.

BY THE REFEREE

W. K. Spraduzky

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 _____, 2010.

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.

Court: CO Garfield County District Court 9th JD

Judge: Holly Kirsner Strablizky

Current Date: Nov 14, 2010

Case Number: 2009CW63

/s/ **Judge James B Boyd**