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| DISTRICT COURT, WATER DIVISION 2 STATE OF COLORADO PUEBLO COUNTY JUDICIAL BUILDING 320 WEST 10 TH STREET PUEBLO, CO 81003 | EFILED Document – District Court 2010CW56 CO Pueblo County District Court 10th JD Filing Date: Dec 1 2010 10:40AM MST Filing ID: 34613542 Review Clerk: N/A |
| Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN MIDDLE CREEK, A NATURAL STREAM, IN THE UPPER ARKANSAS WATERSHED, IN CUSTER COUNTY, COLORADO | COURT USE ONLY |
| | Case No. : 10CW56 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 (“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 August 25, 2010.

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 and the time for filing additional Statements of Opposition has expired.

5. Consultation: The Division Engineer filed a Summary of Consultation pursuant to § 37-92-302(4), C.R.S. (2010) dated October 14, 2010, and the Referee has given it due consideration.

6. Name of natural stream: Middle Creek, tributary to North Creek, tributary to the North Fork of the St. Charles River, tributary to the St. Charles River, tributary to the Arkansas River
7. Location:
- a. The natural stream segment through which an instream flow is claimed: The natural stream channel from the headwaters in the vicinity of latitude 38° 02' 44.30"N and longitude 105° 10' 31.31"W as the upstream terminus and extending to the confluence with Ophir Creek at latitude 38° 03' 55.58"N and longitude 105° 06' 20.10"W as the downstream terminus, being a distance of approximately 4.78 miles. This segment can be located on the Deer Park and St. Charles Peak U.S.G.S. quadrangle.
 - b. For administrative purposes only:

Upper Terminus =
NW SW S13 T23S R70W 6th PM
244' East of the West Section Line; 2347' North of the South Section Line
UTM North: 4210893.3 UTM East: 484613.1

Lower Terminus =
NE NE S9 T23S R69W 6th PM
1305' West of the East Section Line; 1223' South of the North Section Line
UTM North: 4213080.9 UTM East: 490738.2
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 26, 2010. The appropriation was completed on January 26, 2010 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 3.4 cfs (April 15 – June 30), 2.0 cfs (July 1 – August 31) and 1.0 cfs (September 1 – April 14).

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. C.R.S. §§ 37-92-203 and 302.
12. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
13. Burden of Proof. The CWCB has complied with all requirements and has met its burden 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

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 a decree (ABSOLUTE) in the amount of 3.4 cfs (April 15 – June 30), 2.0 cfs (July 1 – August 31) and 1.0 cfs (September 1 – April 14) is hereby entered to preserve the natural environment to a reasonable degree in the reach of Middle Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.


16. The priority herein awarded was filed in the water court in the year of 2010 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 3rd day of November, 2010.

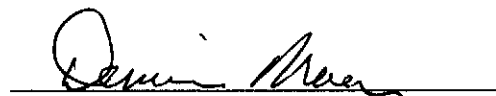
BY THE REFEREE


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 1 day of December, 2010.

BY THE COURT


Water Judge
Water Division No. 2
State of Colorado