

DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	EFILED Document CO Montrose County District Court 7th JD Filing Date: Mar 14 2011 1:40PM MDT Filing ID: 36459415 Review Clerk: Darleen Cappannokeep
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN ALPINE GULCH, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED, IN HINSDALE COUNTY, COLORADO.	
	<p style="text-align: center;">COURT USE ONLY</p> Case No. : 10CW130 Div. 4
<p style="text-align: center;">FINDINGS AND RULING OF REFEREE AND DECREE OF THE WATER COURT</p>	

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 October 28, 2010. The Application was thereafter referred to the Water Referee for Water Division No. 4, 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 and the time for filing Statements of Opposition has expired.
5. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to § 37-92-302(4) C.R.S. dated January 20, 2011 recommending approval of the application.
6. Name of Natural Stream: Alpine Gulch tributary to Henson Creek tributary to Lake Fork Gunnison River
7. Location:
 - a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the headwaters in the vicinity of latitude 37° 57' 17.53"N and longitude 107° 24' 17.78"W as the upstream terminus and extending to the confluence with Henson Creek at latitude 38° 01' 7.94"N and longitude 107° 21' 31.27"W as the downstream terminus, being a distance of approximately 5.69 miles. This segment can be located on the Redcloud Peak, Lake San Cristobal and Lake City U.S.G.S. quadrangles.
 - b. For administrative purposes only:

Upper Terminus =
NE SW S27 T43N R5W NMPM
1932' East of the West Section Line, 2416' North of the South Section Line
UTM North: 4203536.1 UTM East: 288708.3

Lower Terminus =
NE SE S31 T44N R4W NMPM
245' West of the East Section Line, 2034' North of the South Section Line
UTM North: 4210534.6 UTM East: 292952.4
8. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of Appropriation and Beneficial Use: The water was first applied to the above beneficial use on or before January 26, 2010. Under Section 37-92-103(4), C.R.S. (2010), the definition of beneficial use includes "the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Section 37-92-102(3)(c) states that the CWCB "shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation" to be made. Section 37-92-102(4)(a) states that the CWCB, "in its discretion, may determine whether or not to appropriate minimum stream or lake levels" to preserve the environment to a reasonable degree. Thus, the appropriation of an instream flow right "in the manner prescribed by law," and the "beneficial use" of an instream flow right under section 37-92-103(4) both occur when the CWCB declares its

intent to appropriate. In this case, the CWCB declared its intent to appropriate instream flow water rights during its public meeting on January 26, 2010.

10. Amount of Water Claimed (ABSOLUTE): Instream flow of 5.0 cfs (April 15 – September 30) and 1.0 cfs (October 1 – April 14).

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 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. C.R.S §§ 37-92-203 and 302 (2010).
13. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S §§ 37-92-302, 304 and 305. (2010).
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.

RULING OF REFEREE, JUDGMENT AND DECREE

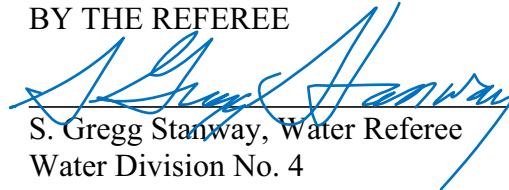
15. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.
16. The Application is granted and the Court hereby approves and decrees the absolute water rights described herein, in the amount of 5.0 cfs (April 15 – September 30) and 1.0 cfs (October 1 – April 14) in order to preserve the natural environment to a reasonable degree in the reach of Alpine Gulch between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.
17. 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 17th day of February, 2011.

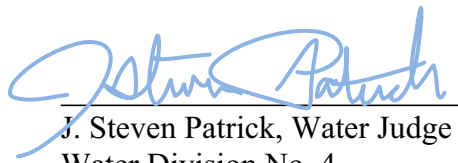
BY THE REFEREE


S. Gregg Stanway, 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 14th day of March, 2011.

BY THE COURT


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