



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: Apr 3 2011 2:34PM MDT

Filing ID: 36824312

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 BALDY CREEK, A NATURAL STREAM, IN
THE WATERSHED OF COLORADO
HEADWATERS PLATEAU,

IN GARFIELD COUNTY, COLORADO.

COURT USE ONLY

Case No. : 08CW99

Div. 5

**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF
REFEREE 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 July 31, 2008. 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.

On December 29, 2010, after the Water Referee entered her original ruling on December 28, 2010, the CWCB filed an Unopposed Motion to Amend Ruling of the Referee. CWCB's Motion was based on grounds that: (1) the ruling should include a volumetric limitation as agreed to by the Applicant and Opposer Juliet Shield Taylor; and (2) an internal reference needed to be corrected. This Ruling Amends the Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree of the Water Court filed on December 28, 2010 ("Original Ruling") by revising paragraph 16 to address 2 above and paragraph 17 to address 1 above. All other aspects of the Original Ruling remain the same.

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. Name and address of Applicant:
Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado 80203
(303) 866-3441
2. Application: This Application was filed on July 31, 2008, and was referred to the Water Referee for Water Division No. 5, in accordance with C.R.S. §§ 37-92-101, *et seq.*
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: A Statement of Opposition was filed by Juliet Shield-Taylor, and the time for filing Statements of Opposition has passed. CWCB and Juliet Shield-Taylor entered into a stipulation on November 15, 2010.
5. Consultation: On June 24, 2009, the Division Engineer submitted a Summary of Consultation and the Referee has given it due consideration. CWCB filed a response to the Summary of Consultation on August 3, 2009.
6. Name of Natural Stream: Baldy Creek, tributary to Garfield Creek, tributary to the Colorado River.
7. Legal description of the stream segment through which an instream flow is claimed:
 - a. The natural stream channel from headwaters in the vicinity of latitude 39° 24' 28.06"N and longitude 107° 24' 29.01"W as the upstream terminus and extending to the headgate of the Murray and Yule Ditch at latitude 39° 29' 28.73"N and longitude 107° 30' 9.11"W as the downstream terminus, being a distance of approximately 9.7 miles. This segment can be located on the Center Mountain and Gibson Gulch U.S.G.S. quadrangles.
 - b. For administrative purposes only:
Upper Terminus =
NW NE S35 T7S R90W 6th PM
2200' West of the East Section Line
365' South of the North Section Line
UTM North: 4364798.3 UTM East: 292672.2

Lower Terminus =
NW NE S36 T6S R91W 6th PM
2600' West of the East Section Line
385' South of the North Section Line
UTM North: 4374290.4 UTM East: 284794.8

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 CWCB on January 23, 2008 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 6.5 cfs (April 1 – June 30) and 0.6 cfs (July 1 – March 31), absolute.

CONCLUSIONS OF LAW

11. The foregoing Findings of Fact are fully incorporated herein.
12. 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. 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. 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

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 a decree in the amount of 6.5 cfs (April 1 – June 30) and 0.6 cfs (July 1 – March 31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Baldy Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 23, 2008.

17. Stipulation with objector Juliet Shield Taylor: The CWCB and Juliet Shield Taylor ("Objector") entered into a Stipulation, dated November 15, 2010, which was intended as a compromise and settlement of this litigation between said parties. As part of that Stipulation, the CWCB acknowledges that Objector diverted up to 0.03 cfs from the Cooley Ditch No. 3 for the irrigation of 1.0 acre from March through October on Objector's property located at 4338 County Road 312, New Castle, CO 81647. The total annual diversion of this irrigation practice is 14.55 acre-feet. This irrigation practice was occurring prior to the CWCB's appropriation of the Baldy Creek instream flow right decreed herein. C.R.S. § 37-92-102(3)(b) provides that instream flow water rights appropriated by the CWCB shall be "subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree." Consequently, the CWCB's Baldy Creek instream flow right decreed herein shall be subject to the above referenced pre-existing use pursuant to C.R.S. § 37-92-102(3)(b).

18. Except as provided above in Paragraph 17 under C.R.S. § 37-92-102(3)(b), 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.

19. Except as provided above in Paragraph 17, the application of C.R.S. § 37-92-102(3)(b) shall not result in general subordination of the Baldy Creek instream flow right decreed herein to any other junior water right. The Baldy Creek instream flow water right decreed herein shall be administered subject to the prior appropriation system in relation to all other water rights.


20. 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 11th day of January, 2011.

BY THE REFEREE:



Water Referee

Water Division No. 5

State of Colorado

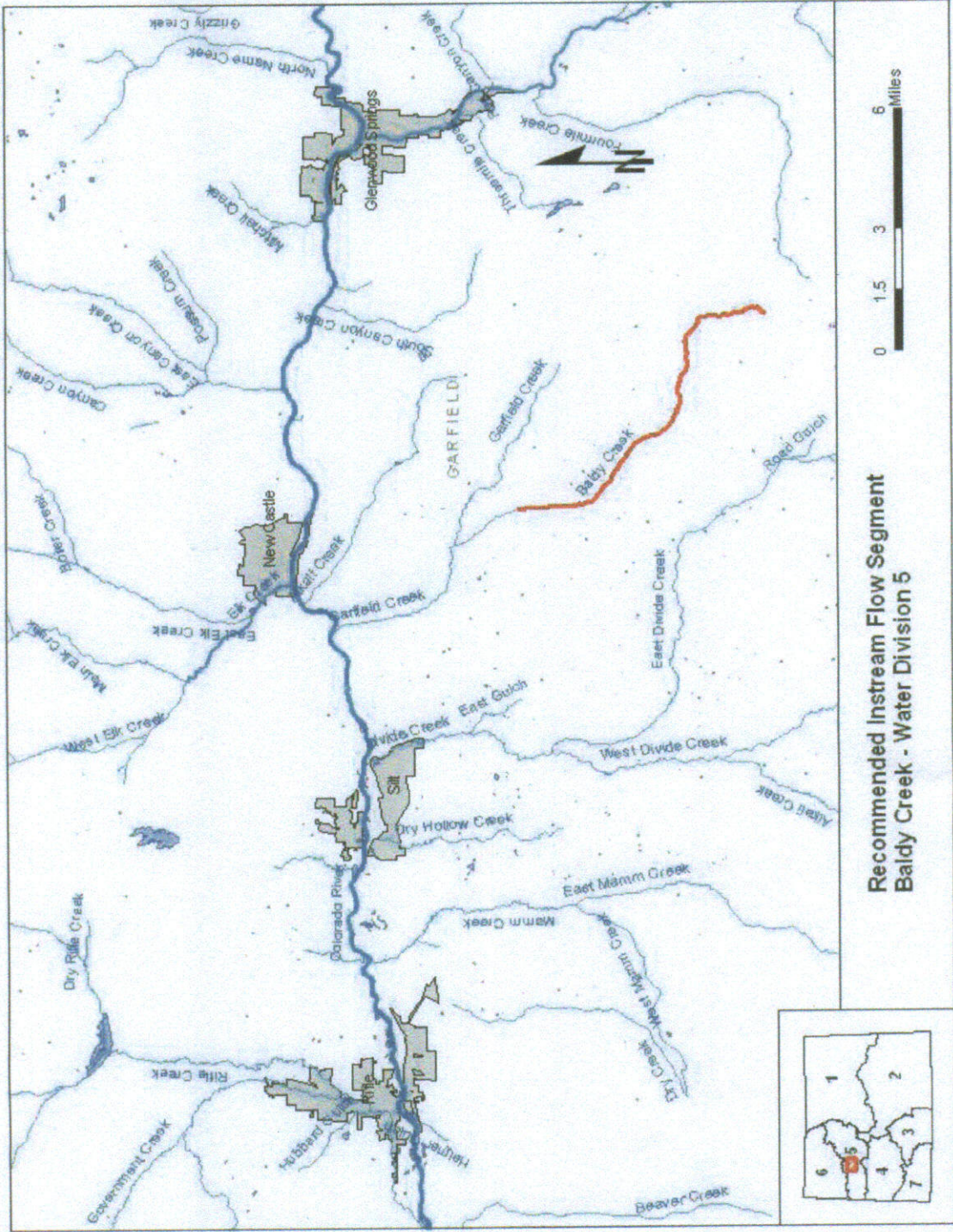
No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court.

Dated this _____ day of _____, 2011.

BY THE COURT

Water Judge
Water Division No. 5
State of Colorado

Vicinity Map



DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO, GARFIELD COUNTY COURTHOUSE 109 8 th Street, Suite 104 Glenwood Springs, CO 81601	<div data-bbox="1036 268 1425 493" data-label="Image"> </div>
<p>Concerning The Application For Water Rights Of: THE COLORADO WATER CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE STATE OF COLORADO,</p> <p>IN BALDY CREEK, A NATURAL STREAM IN THE WATERSHED OF THE COLORADO HEADWATERS PLATEAU</p> <p>IN GARFIELD COUNTY, COLORADO.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for the Colorado Water Conservation Board: JOHN W. SUTHERS, Attorney General PETER C. JOHNSON, Assistant Attorney General* Registration Number: 41670 1525 Sherman Street, 7th Floor Denver, CO 80203 303-866-5018 Email: peter.johnson@state.co.us *Counsel of Record</p>	<p>Case No.: 08CW99</p> <p>Div.: 5</p>
STIPULATION	

The Applicant, Colorado Water Conservation Board ("CWCB"), and the Objector, Juliet Shield-Taylor ("Objector"), by and through their attorneys, hereby stipulate and agree as follows:

1. On July 31, 2008, the CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Decree. Through this Application, the CWCB seeks an instream flow water right on Baldy Creek.
2. Juliet Shield-Taylor ("Objector") filed a timely Statement of Opposition on September 30, 2008 in the above-captioned matter.
3. The parties have conferred regarding Applicant's claims and Objector's opposition and have agreed to resolve the matter as provided herein.

4. Pursuant to C.R.S. Section 37-92-102(3)(b), the CWCB and Objector acknowledge that Objector has diverted up to 0.03 c.f.s. from the Cooley Ditch No. 3 for the irrigation of 1.0 acre on Objector's property located at 4338 County Road 312, New Castle, CO 81647. The total annual diversion of this irrigation practice is 14.55 acre-feet. This irrigation practice was occurring prior to the CWCB's appropriation of the Baldy Creek instream flow right decreed herein. An affidavit of Juliet Shield-Taylor, the owner and irrigator of the subject property, confirming this historical practice, is attached hereto as **Exhibit A**.
5. C.R.S. Section 37-92-102(3)(b) provides that instream flow water rights appropriated by the CWCB shall be "subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree." Consequently, the CWCB's Baldy Creek instream flow right decreed herein shall be subject to the above referenced pre-existing use pursuant to C.R.S. Section 37-92-102(3)(b). All priorities associated with the Cooley Ditch No. 3 greater than those uses acknowledged above shall be junior to the instream flow water right approved herein.
6. The Baldy Creek instream flow water right decreed herein shall be administered subject to the prior appropriation system in relation to all other water rights.
7. The limited subordination of the Baldy Creek instream flow right to the Objector's pre-existing water use, as provided above, shall not interfere with the administration of Baldy Creek and shall not result in general subordination of the Baldy Creek instream flow right decreed herein to any other water right junior to that instream flow water right.
8. Objector agrees to the entry of a Judgment and Decree by the Water Judge in the above-captioned case upon terms and conditions no less restrictive than those set forth in the proposed Findings of Fact, Ruling of Referee, and Judgment and Decree of the Water Court attached hereto as **Exhibit B**.
9. Objector shall remain on the service list in this case and shall receive a copy of any proposed Referee's Ruling and/or Decree in this matter.
10. This Stipulation shall be binding on the parties, their successors and assigns, and the parties shall be responsible for their own attorneys' fees and costs in this proceeding. This Stipulation shall be enforceable as an agreement between the parties or as an order of the Court.

11. This Stipulation is entered into by way of compromise and settlement of this litigation. Any agreement or terms and conditions herein are due solely to the unique circumstances of this case and the resulting Stipulation. This Stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law, or specific engineering methodologies or administrative practices in future stipulations or decrees. Nothing contained in said proposed decree shall be binding upon the CWCB other than in the current proceeding.

Wherefore, the parties respectfully request that the Court enter an order, as provided, approving this Stipulation.

Dated this 15th day of November, 2010.

PATRICK MILLER KROPF, P.C.



Laura C. Makar, # 41385
Attorney for Opposer Juliet Shield Taylor
Patrick Miller Kropf LLP
730 E. Durant Ave., Suite 200
Aspen, CO 81611

JOHN W. SUTHERS
Attorney General



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Assistant Attorney General
Natural Resources and Environment Section
Office of the Colorado Attorney General
1525 Sherman Street
Denver, CO 80203
Attorneys for the Colorado Water Conservation Board
Counsel of Record*

AFFIDAVIT

County of PITKIN)
)
State of COLORADO) ss

I, Juliet Shield-Taylor, 0221 N. Starwood Dr., Aspen, CO 81611, having first been sworn upon my oath, depose and say that:

- 1) I am the owner of real property known as 4338 County Rd. 312, New Castle, CO 81647 in Garfield County.
- 2) I irrigate such real property with water rights owned by me, including specifically with the Cooley Ditch No. 3.
- 3) I divert 0.03 c.f.s in the Cooley Ditch No. 3, Priority No. 109A on Baldy Creek, decreed in Case No. CA 0542, with an adjudication date of April 8, 1993 and an appropriation date of March 25, 1990. My annual diversion of the Cooley Ditch No. 3 is 14.55 AF.
- 4) I irrigate 1.0 acre from March through October under the Cooley Ditch No. 3.
- 5) I have diverted and used the Cooley Ditch No. 3 historically and my use commenced prior to January 23, 2008 when the Colorado Water Conservation Board appropriated an instream flow right on Baldy Creek described in Case No 08CW99 and I continue to divert this water right.

Further affiant sayeth not.

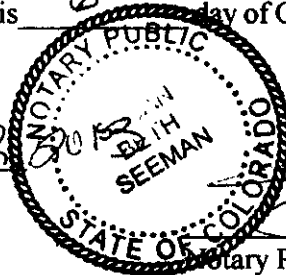
I, Juliet Shield-Taylor, being first duly sworn upon oath, depose and say that I have read the foregoing, know the contents thereof and that the same is true to the best of my personal information, knowledge and belief.


Juliet Shield-Taylor

Subscribed and sworn to before me this 6 day of October, 2010, by Juliet Shield-Taylor.

Witness my hand and official seal.

My commission expires June 12, 2012




Notary Public

EXHIBIT B

DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO, GARFIELD COUNTY COURTHOUSE 109 8 th Street, Suite 104 Glenwood Springs, CO 81601	<div style="text-align: center;">COURT USE ONLY</div>
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN BALDY CREEK, A NATURAL STREAM, IN THE WATERSHED OF COLORADO HEADWATERS PLATEAU, IN GARFIELD COUNTY, COLORADO.	
Attorneys for the Colorado Water Conservation Board: JOHN W. SUTHERS, Attorney General BETH VAN VURST*, Assistant Attorney General 1525 Sherman Street, 5 th Floor Denver, CO 80203 (303) 855-5054 Registration Number: 36931 *Counsel of Record <u>Beth.vanvurst@state</u>	Case No. : 08CW99 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. Name and address of Applicant:
 Colorado Water Conservation Board
 1313 Sherman Street, Suite 721
 Denver, Colorado 80203
 (303) 866-3441

2. Application: This Application was filed on July 31, 2008, and was referred to the Water Referee for Water Division No. 5, in accordance with C.R.S. § § 37-92-101, et seq.

EXHIBIT B

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. A Statement of Opposition was filed by Juliet Shield-Taylor, and the time for filing Statements of Opposition has passed.
5. Consultation. On June 24, 2009, the Division Engineer submitted a Summary of Consultation and the Referee has given it due consideration. CWCB filed a response to the Summary of Consultation on August 3, 2009.
6. Name of Natural Stream: Baldy Creek, tributary to Garfield Creek, tributary to the Colorado River.
7. Legal description of the stream segment through which an instream flow is claimed:
 - a. The natural stream channel from headwaters in the vicinity of latitude 39° 24' 28.06"N and longitude 107° 24' 29.01"W as the upstream terminus and extending to the headgate of the Murray and Yule Ditch at latitude 39° 29' 28.73"N and longitude 107° 30' 9.11"W as the downstream terminus, being a distance of approximately 9.7 miles. This segment can be located on the Center Mountain and Gibson Gulch U.S.G.S. quadrangles.
 - b. For administrative purposes only:
Upper Terminus =
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2200' West of the East Section Line
365' South of the North Section Line
UTM North: 4364798.3 UTM East: 292672.2

Lower Terminus =
NW NE S36 T6S R91W 6th PM
2600' West of the East Section Line
385' South of the North Section Line
UTM North: 4374290.4 UTM East: 284794.8
8. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of initiation of appropriation: January 23, 2008
10. The water was first applied to the above beneficial use on January 23, 2008, 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).

11. Amount of water claimed: (ABSOLUTE): Instream flow of 6.5 cfs (April 1 – June 30) and 0.6 cfs (July 1 – March 31).

CONCLUSIONS OF LAW

12. The foregoing findings of fact are fully incorporated herein.
13. 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).
14. The CWCB has fulfilled all legal requirements for a decree for water rights including §§ 37-92-302, 304 and 305, C.R.S. (2008).
15. 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

16. 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.
17. The application is granted and a decree (ABSOLUTE) in the amount of 6.5 cfs (April 1 – June 30) and 0.6 cfs (July 1 – March 31) is hereby entered to preserve the natural environment to a reasonable degree in the reach of Baldy Creek between the upstream and downstream terminus points described in paragraph 4 above. The appropriation date for this water right is January 23, 2008.
18. Stipulation with objector Juliet Shield Taylor. The CWCB and Juliet Shield Taylor (“Objector”) entered into a Stipulation, dated November 15, 2010, intended as a compromise and settlement of this litigation between said parties. As part of that Stipulation, the CWCB acknowledges that Objector diverted up to 0.03 cfs from the Cooley Ditch No. 3 for the irrigation of 1.0 acre from March through October on Objector’s property prior to the CWCB’s appropriation of the Baldy Creek instream flow right decreed herein. C.R.S. § 37-92-102(3)(b) provides that instream flow water rights appropriated by the Colorado Water Conservation Board (CWCB) shall be “subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in

EXHIBIT B

existence on the date of such appropriation, whether or not previously confirmed by court order or decree.” Consequently, the CWCB’s Baldy Creek instream flow right decreed herein shall be subject to the above referenced pre-existing use pursuant to C.R.S. § 37-92-102(3)(b).

19. Except as provided above in Paragraph 18 under C.R.S. § 37-92-102(3)(b), 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.

20. Except as provided above in Paragraph 18, the application of C.R.S. § 37-92-102(3)(b) shall not result in general subordination of the Baldy Creek instream flow right decreed herein to any other junior water right. The Baldy Creek instream flow water right decreed herein shall be administered subject to the prior appropriation system in relation to all other water rights.

21. 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 _____ day of _____, 2010.

BY THE REFEREE:

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