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| DISTRICT COURT, WATER DIVISION 4<br>STATE OF COLORADO,<br>1200 N. GRAND AVE.<br>BIN A<br>MONTROSE, CO 81401   | <b>EFILED Document</b><br><b>CO Montrose County District Court 7th JD</b><br><b>Filing Date: Mar 14 2011 1:38PM MDT</b><br><b>Filing ID: 36459313</b><br><b>Review Clerk: Darleen Cappannokeep</b> |
| <b>Concerning the Application for Water Rights of:</b><br><br>COLORADO WATER CONSERVATION BOARD,<br>IN SPRING CREEK, A NATURAL STREAM,<br>IN THE UPPER GUNNISON WATERSHED,<br><br>IN HINSDALE COUNTY, COLORADO. |  |
|   | <p style="text-align: center;"><b>COURT USE ONLY</b></p><br>Case No. : 10CW129<br><br>Div. 4   |
| <p style="text-align: center;"><b>FINDINGS AND RULING OF REFEREE AND<br/>DECREE OF THE WATER COURT</b></p>  |  |

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: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on October 28, 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 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 January 20, 2011 recommending approval of the application.

6. Name of Natural Stream: Spring Creek tributary to Cebolla Creek tributary to Blue Mesa Reservoir

7. Location:

a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the headgate of Creede Trail Ditch at latitude 38° 03' 53.67"N and longitude 107° 00' 9.77"W as the upstream terminus and extending to the confluence with Cebolla Creek at latitude 38° 05' 46.88"N and longitude 107° 02' 7.72"W as the downstream terminus, being a distance of approximately 3.25 miles. This segment can be located on the Mineral Mountain U.S.G.S. quadrangle.

b. For administrative purposes only:

Upper Terminus =

SW NE S17 T44N R1W NMPM

1504' South of the North Section Line, 1818' West of the East Section Line

UTM North: 4214910.5 UTM East: 324313.5

Lower Terminus =

NE NE S1 T44N R2W NMPM

307' West of the East Section Line, 1074' South of the North Section Line

UTM North: 4218462.5 UTM East: 321515.5

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 1 – September 30), 3.3 cfs (October 1 – November 15) and 2.0 cfs (November 16 – March 31).

### CONCLUSIONS OF LAW

11. Notice and Jurisdiction. 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. §§ 37-92-203 and 302 C.R.S (2010).

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

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 5.0 cfs (April 1 – September 30), 3.3 cfs (October 1 – November 15) and 2.0 cfs (November 16 – March 31) in order to preserve the natural environment to a reasonable degree in the reach of Spring Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.

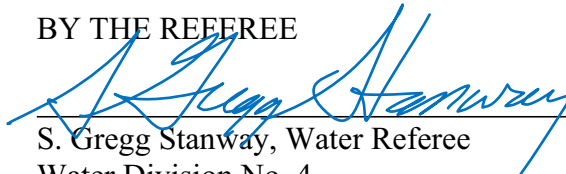
16. The priority herein awarded was filed in the water court in the year of 2010 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry 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 17<sup>th</sup> day of February, 2011.

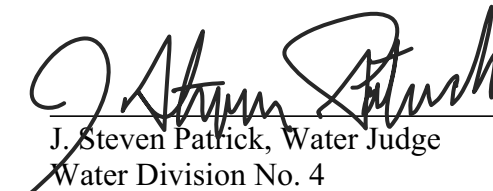
BY THE REFEREE

  
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 14<sup>th</sup> day of March, 2011.

BY THE COURT

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