

DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	<b>EFILED Document</b> <b>CO Montrose County District Court 7th JD</b> <b>Filing Date: Jul 13 2011 2:04PM MDT</b> <b>Filing ID: 38673462</b> <b>Review Clerk: Darleen Cappannokeep</b>  <div style="text-align: center;"><b>COURT USE ONLY</b></div>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN COCHETOPA CREEK (Lower), A NATURAL STREAM, IN THE TOMICHI WATERSHED, (INCREASE)  IN SAGUACHE COUNTY, COLORADO.	
	Case No. : 10CW132  Div. 4
<div style="text-align: center;"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE JUDGMENT AND DECREE OF THE WATER COURT</b></div>	

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 referred to the Water Referee for Water Division 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 Right 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, address and telephone number of Applicant:  
  
Colorado Water Conservation Board  
1313 Sherman Street, Suite 721  
Denver, Colorado 80203  
(303) 866-3441
3. Application: The CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on October 28, 2010.
4. 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.
5. Objectors: No Statements of Opposition were filed in this matter and the time for filing Statements of Opposition has expired.
6. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to § 37-92-302(4) C.R.S. dated April 29, 2011 recommending approval of the application with the inclusion in this ruling of certain terms and conditions. Those terms and conditions are contained herein in paragraphs 13 and 14 below.
7. Name of Natural Stream: Cochetopa Creek tributary to Tomichi Creek tributary to Gunnison River
8. Location: The natural stream channel from the confluence with Alkali Creek and extending to the South Kreuger Ditch headgate, being a distance of approximately 12.92 miles. This segment can be located on the Iris and Sawtooth Mountain U.S.G.S. quadrangles.
  - a. Upper Terminus:  
UTM: NAD 1983 UTM Zone 13 North: 4239798.6 UTM East: 346080.0  
PLSS: NW NW Section 33, Township 47 North, Range 2 East of the  
N.M.P.M., at a point 1276 feet East of the West Section Line and  
1211 feet South of the North Section Line.  
Lat/Long: latitude 38° 17' 35.08"N and longitude 106° 45' 36.33"W
  - b. Lower Terminus:  
UTM: NAD 1983 UTM Zone 13 North: 4255205.7 UTM East: 346364.6  
PLSS: SE SW Section 9, Township 48 North, Range 2 East of the  
N.M.P.M., at a point 1684 feet East of the West Section Line and  
964 feet South of the North Section Line  
Lat/Long: latitude 38° 25' 54.89"N and longitude 106° 45' 36.71"W

The Public Land Survey System (PLSS) location in this decree was derived using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database.

9. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.
10. Date of Appropriation: Appropriation and beneficial used occurred on January 26, 2010 by the action of the CWCB under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10) C.R.S.
11. Amount of Water Claimed: Instream flow of 6.8 cfs (May 1– November 15), absolute.
12. The Colorado Water Conservation Board has an existing instream flow water right on Cochetopa Creek from the confluence with Pauline Creek to the confluence with Tomichi Creek, in the amount of 8.5 cfs (1/1 - 12/31), decreed in case 4-84CW375 with an appropriation date of 5/4/1984. The flow rates sought herein are in addition to the amount of the existing instream flow water right.
13. Based upon existing gage data (USGS 09118450) and field observations, the water commissioner has indicated that the existing ISF water right, decreed in Case No. 84CW375 for 8.5 cfs, is not met during all periods of some years. Therefore, the requested flow for the junior increase to the ISF water right, as decreed herein, will also not be available at all times and locations within the ISF reach.
14. The Division Engineer only will enforce a call for this instream flow if the call is based upon a flow measurement from a measuring device acceptable to the Division Engineer, and if water is being diverted out-of-priority upstream of that measuring device. Pursuant to section 37-92-502(a), C.R.S. (2010), the CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

### **CONCLUSIONS OF LAW**

15. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
16. 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.

17. The CWCB has fulfilled all legal requirements for a decree for water rights including §§ 37-92-302, 304 and 305, C.R.S.
18. 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 THE REFEREE, JUDGMENT AND DECREE**

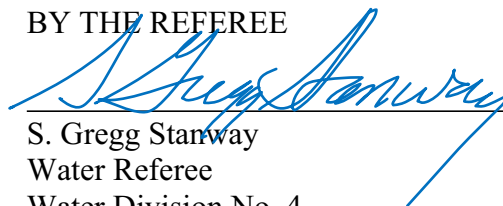
19. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.
20. The Application is granted and the Court hereby approves and decrees the absolute water rights described herein, in the amount of 6.8 cfs (May 1– November 15) in order to preserve the natural environment to a reasonable degree in the reach of Cochetopa Creek between the upstream and downstream terminus points described in paragraph 8 above. The appropriation date for this water right is January 26, 2010.
21. 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 the historical date of appropriation and not affected by the date of entry of ruling. The CWCB 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 16<sup>th</sup> day of June, 2011.

BY THE REFEREE



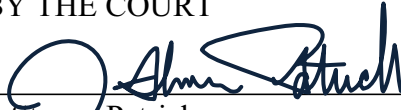
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S. Gregg Stanway  
Water Referee  
Water Division No. 4  
State of Colorado

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

Dated this 13<sup>th</sup> day of July, 2011.

BY THE COURT

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