

DISTRICT COURT, WATER DIVISION 6 STATE OF COLORADO, ROUTT COUNTY JUSTICE CENTER P.O. BOX 773117 STEAMBOAT SPRINGS CO 80477	<div style="color: red; text-align: center;"> <b>EFILED Document</b>  <b>CO Routt County District Court 14th JD</b>  <b>Filing Date: Jun 7 2011 3:52PM MDT</b>  <b>Filing ID: 38013758</b>  <b>Review Clerk: Sharon L Martin</b> </div> <div style="text-align: center; margin-top: 100px;"> <b>COURT USE ONLY</b> </div>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN BIG BEAVER CREEK, A NATURAL STREAM, IN THE UPPER WHITE WATERSHED, (INCREASE)  IN RIO BLANCO COUNTY, COLORADO.	
	Case No. : 10CW56  Div. 6
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND  DECREE OF THE WATER COURT</b>	

This matter comes before the Water Referee by Application of the Colorado Water Conservation Board (“CWCB”) for a water right to preserve the natural environment to a reasonable degree. The Application was filed on September 28, 2010. The Application was thereafter referred to the Water Referee for Water Division 6, by the Water Court for Water Division 6, in accordance with C.R.S. § 37-92-101 *et seq.*

The 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 for Water Division 6, 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 in this matter:

#### FINDINGS OF FACT

1. The statements in the application are true.
  
2. The name and address of Applicant:  
Colorado Water Conservation Board  
1313 Sherman Street, Suite 721  
Denver, CO 80203

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. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to C.R.S. § 37-92-302(4), dated December 27, 2010 and the Referee has given it due consideration.
6. Name of natural stream: Big Beaver Creek, tributary to the White River.
7. Location:
  - a. The natural stream segment through which an instream flow is claimed: The natural stream channel from the confluence with Allen Creek at latitude 40° 04' 37.59"N and longitude 107° 36' 32.86"W as the upstream terminus and extending to the confluence with East Beaver Creek at latitude 40° 02' 5.77"N and longitude 107° 38' 40.56"W as the downstream terminus, being a distance of approximately 3.94 miles. This segment can be located on the Sawmill Mountain and Fawn Creek U.S.G.S. quadrangles.
  - b. For administrative purposes only:

Upper Terminus =  
SE SW S4 T1N R91W 6<sup>th</sup> PM  
1544' East of the West Section Line  
85' North of the South Section Line  
UTM North: 4439578.1 UTM East: 277523.0

Lower Terminus =  
SE SW S19 T1N R91W 6<sup>th</sup> PM  
1766' East of the West Section Line  
579' North of the South Section Line  
UTM North: 4434986.0 UTM East: 274358.9
8. Use of Water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of Appropriation: Beneficial use occurred on January 26, 2010. The appropriation was completed on January 26, 2010 by the action of the CWCB 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 2.1 cfs (April 1 – June 30).
11. The Colorado Water Conservation Board has an existing instream flow water right on Big Beaver Creek from the confluence with Allen Creek to the confluence with East Beaver Creek, in the amount of 2.9 cfs (April 1 – July 14) and 1.0 cfs (July 15 – March

31), decreed in Case No. 03CW276, Water Division 5, with an appropriation date of January 22, 2003. The flow rates sought herein are in addition to the amount of the existing instream flow water right.

### **CONCLUSIONS OF LAW**

12. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
13. Notice and Jurisdiction. The Water Court for Division 6 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.
14. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
15. Burden of Proof. The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water right claimed in the Application and is therefore entitled to a decree approving the requested water right.

### **RULING OF REFEREE, JUDGMENT AND DECREE**

16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee, Judgment and Decree of the Court by this reference.
17. The application is granted and a decree (ABSOLUTE) in the amount of 2.1 cfs (April 1 – June 30) is hereby entered to preserve the natural environment to a reasonable degree in the reach of Big Beaver Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.
18. 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 2<sup>nd</sup> day of May, 2011.

BY THE REFEREE:

/s/ Daniel R. Birch

Water Referee

Water Division No. 6

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 7th day of June, 2011.

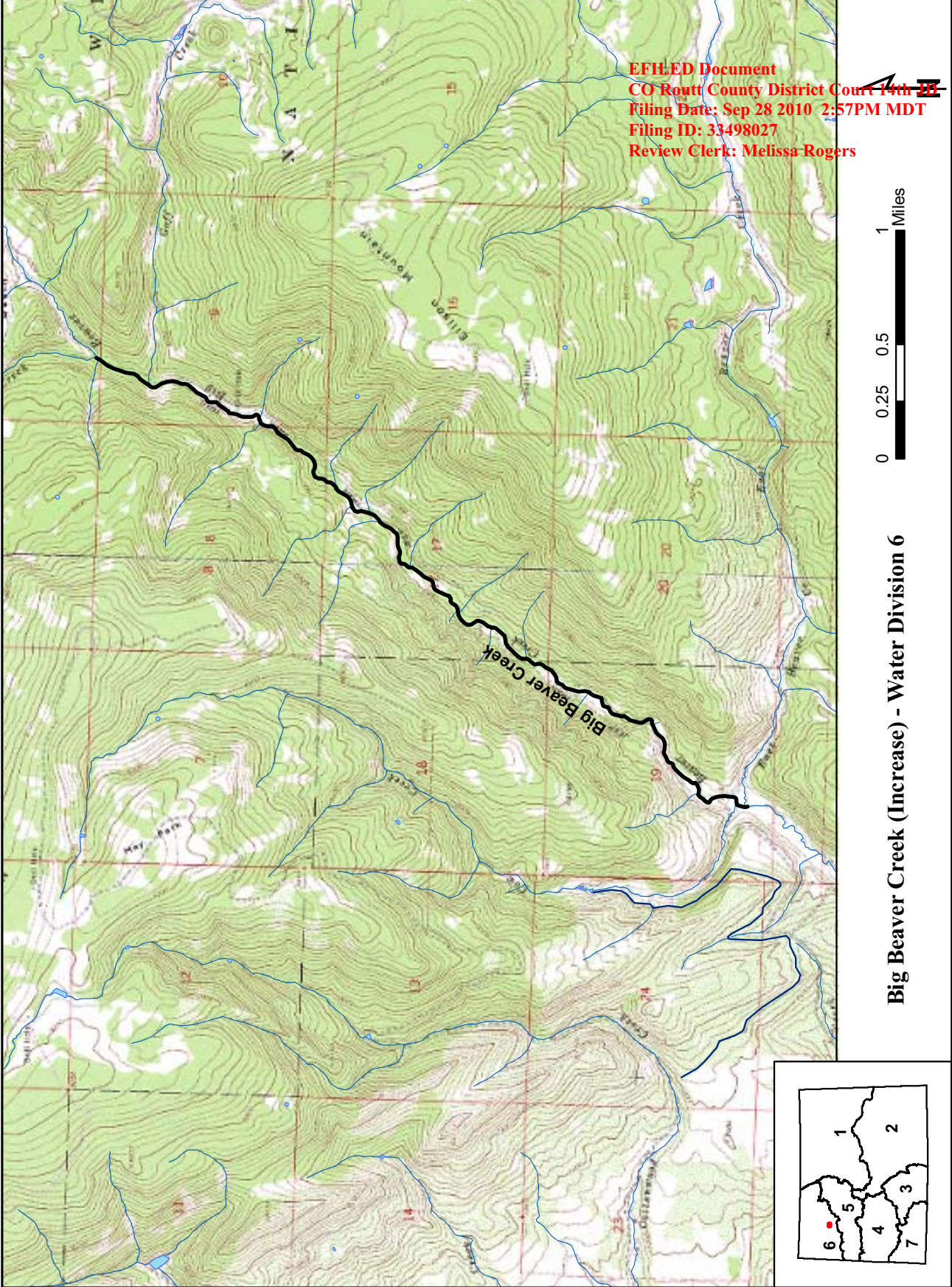
BY THE COURT



Michael A. O'Hara, III, Water Judge

Water Division No. 6, State of Colorado





This document constitutes a ruling of the court and should be treated as such.

**Court:** CO Routt County District Court 14th JD

**Judge:** Dan Birch

**File & Serve**

**Transaction ID:** 37350445

**Current Date:** Jun 07, 2011

**Case Number:** 2010CW56

**Case Name:** In the interest of: COLORADO WATER CONSERVATION BOARD

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/s/ **Judge Michael Andrew O'Hara III**