



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

DISTRICT COURT, WATER DIVISION 5
STATE OF COLORADO

109 8th Street, #104
Glenwood Springs, CO 81601

Concerning The Application For Water Rights Of:

COLORADO WATER CONSERVATION BOARD,
IN EAST WILLOW CREEK, A NATURAL STREAM,
IN THE WATERSHED OF PICEANCE-YELLOW,

IN GARFIELD AND RIO BLANCO COUNTY,
COLORADO

CO Garfield County District Court 9th JD
Filing Date: Jan 22 2012 3:54PM MST
Filing ID: 42056384
Review Clerk: Kathy Hall

▲ **COURT USE ONLY** ▲

Case No.: 08CW106

Div.: 5

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE
JUDGMENT 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 referred to the Water Referee for Water Division 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.

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, address and telephone number of Applicant:

Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado, 80203
(303) 866 – 3441
3. Application: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on August 6, 2008.
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. Objector: A Statement of Opposition was filed by Exxon Mobil Corporation and the time for filing Statements of Opposition has expired. The Applicant and Objector entered into a Stipulation on June 13, 2011.
6. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to C.R.S. § 37-92-302(4) dated May 5, 2009. The CWCB has addressed the Division Engineer's concerns set forth in the Summary of Consultation.
7. Name of Natural Stream: East Willow Creek tributary to Willow Creek tributary to Piceance Creek tributary to the White River.
8. Location: The natural stream channel from the confluence with Bull Fork East Willow Creek as the upstream terminus and extending to the confluence with West Willow Creek as the downstream terminus, being a distance of approximately 2.70 miles. This segment can be located on the Bull Fork U.S.G.S. quadrangle. See attached Exhibit.
 - a. Upper Terminus:
UTM: NAD 1983 UTM Zone 13 North: 4398772.9 UTM East: 218480.8
PLSS: NW NE Section 21, Township 4 South, Range 97 West of the 6th PM, at a point 2500 feet West of the East Section Line and 675 feet South of the North Section Line
Lat/Long: latitude 39° 41' 32.68"N and longitude 108° 16' 58.85"W
 - b. Lower Terminus:
UTM: NAD 1983 UTM Zone 13 North: 4402760.4 UTM East: 218712.5
PLSS: NW SE Section 4, Township 4 South, Range 97 West of the 6th PM

at a point 2000 feet West of the East Section Line and 1650 feet North of the South Section Line

Lat/Long: latitude 39° 43' 42.08"N and longitude 108° 16' 55.27"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 use occurred on January 23, 2008 by the action of the CWCB under the provisions of C.R.S. §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10).
11. Amount of Water Claimed: Instream flow of 0.8 cfs (May 1 – October 31) and 0.6 cfs (November 1 – April 30), absolute.

CONCLUSIONS OF LAW

12. The foregoing findings of fact are incorporated herein to the extent they constitute conclusions of law.
13. 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.
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. 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

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 the Court hereby approves and decrees the absolute water rights described herein, in the amount of claimed of 0.8 cfs (May 1 – October 31) and 0.6

cfs (November 1 – April 30) in order to preserve the natural environment to a reasonable degree in the reach of East Willow Creek between the upstream and downstream terminus points described in paragraph 8 above. The appropriation date for this water right is January 23, 2008.

18. 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 the historical date of appropriation and not affected by the date of entry of ruling.
19. 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 9th day of December, 2011.

BY THE REFEREE:



Holly Strablizky
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 a Judgment and Decree of this Court.

Dated this _____ day of _____, 2011.

BY THE COURT

Water Judge
Water Division No. 5
State of Colorado

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

Court: CO Garfield County District Court 9th JD

Judge: Holly Kirsner Strablizky

Current Date: Jan 22, 2012

Case Number: 2008CW106

Court Authorizer

Comments:

The exhibit to the Ruling of the Referee is incorporated into this Decree.

/s/ **Judge James B Boyd**

DISTRICT COURT, WATER DIVISION 5, COLORADO
109 8TH STREET, SUITE 104
GLENWOOD SPRINGS, CO 81601
PHONE NUMBER: (970) 945-5075

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

Colorado Water Conservation Board, in East Willow
Creek, a Natural Stream, in the Watershed of Piceance-
Yellow,

In Garfield and Rio Blanco Counties, Colorado

▲ COURT USE ONLY ▲

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CASE No. 08CW106

WATER DIVISION 5

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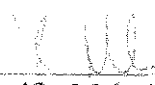
**STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER
CONSERVATION BOARD AND THE EXXON MOBIL CORPORATION**

Applicant, Colorado Water Conservation Board ("CWCB"), and Objector, Exxon Mobil Corporation ("ExxonMobil"), by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. CWCB and ExxonMobil desire to enter into this Stipulation and Agreement for the purpose of resolving the opposition of ExxonMobil in this case.
2. ExxonMobil agrees to the entry of a Ruling of Referee and Decree of the Water Court no less restrictive than the proposed Ruling of Referee and Decree of the Water Court attached to this Agreement as Exhibit A.
3. This Stipulation is entered into by way of compromise and settlement of this litigation. Any agreements 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 proceedings.
4. ExxonMobil shall continue to receive copies of all pleadings filed in this matter.
5. The parties hereto shall bear their own costs and attorneys' fees.
6. This Agreement shall benefit and be binding upon the heirs, successors and assigns of the undersigned parties.
7. The parties jointly request the Water Referee to enter an Order approving this Stipulation.

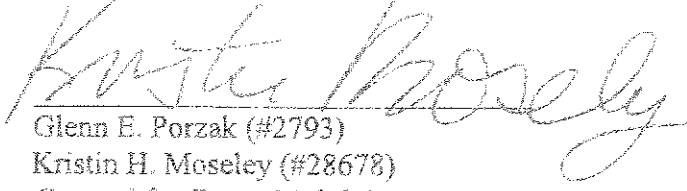
Respectfully submitted this 13 day of June, 2011.

COLORADO OFFICE OF THE ATTORNEY
GENERAL



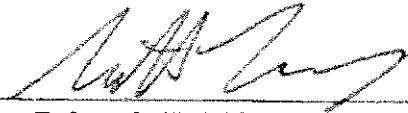
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Scott Balcomb (#1376)

David C. Hallford (#10510)

Scott Grosscup (#35871)

Counsel for Exxon Mobil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2011, a true and correct copy of the foregoing **STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER CONSERVATION BOARD AND THE EXXON MOBIL CORPORATION** was e-filed via Lexis Nexis File and Serve addressed to the following:

△Party Name	Party Type	Attorney	Attorney Type	Firm
COLORADO WATER CONSERVATION BOARD	Applicant	Mele, Jennifer	Privately Retained Attorney	CO Attorney General
DIV. 5 ENGINEER	Division Engineer	Division 5 Water Engineer	Privately Retained Attorney	Division 5 Engineer
DIV. 6 ENGINEER	Division Engineer	Division 6 Water Engineer	Privately Retained Attorney	Division 6 Engineer
STATE ENGINEER	State Engineer	State Water Engineer, Colorado	Privately Retained Attorney	State Engineers Office