

DISTRICT COURT Water Division 1 901-9 TH Avenue Greeley, CO 80632	<p style="color: red; text-align: center;"> EFILED Document – District Court 2008CW162 CO Weld County District Court 19th JD Filing Date: Apr 28 2011 8:24AM MDT Filing ID: 37285355 </p> <p style="text-align: center;">COURT USE ONLY</p>	
<p>Concerning the Application for Water Rights of:</p> <p>COLORADO WATER CONSERVATION BOARD, IN COMO CREEK, A NATURAL STREAM, IN THE WATERSHED OF ST. VRAIN,</p> <p>IN BOULDER COUNTY, COLORADO</p>		
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE OF THE WATER COURT</p>		

This matter comes before the Court by Application of the Colorado Water Conservation Board (“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 of Applicant: Colorado Water Conservation Board

Address of Applicant: 1313 Sherman Street, Suite 721
Denver, CO 80203
(303) 866-3441

2. Application: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on July 31, 2008.

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 the Regents of the University of Colorado and the time for filing additional 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 October 10, 2008 and the Referee has given it due consideration.

6. Name of natural stream: Como Creek tributary to North Boulder Creek tributary to Boulder Creek

7. Location:

a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the headwaters in the vicinity of latitude $40^{\circ} 2' 22.88''\text{N}$ and longitude $105^{\circ} 34' 0.79''\text{W}$ as the upstream terminus and extending to the United States Forest Service Boundary at latitude $40^{\circ} 0' 51''\text{N}$ and longitude $105^{\circ} 30' 52.89''\text{W}$ as the downstream terminus, being a distance of approximately 3.8 miles. This segment can be located on the Ward U.S.G.S. quadrangle.

b. For administrative purposes only:

Upper Terminus =

NW NE S21 T1N R73W 6th PM

1190' South of the North Section Line, 1405' West of the East Section Line

UTM North: 4432316.2 UTM East: 451638.7

Lower Terminus =

SE SW S25 T1N R73W 6th PM

8' North of the South Section Line, 2475' East of the West Section Line

UTM North: 4429456.4 UTM East: 456075.1

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 on January 23, 2008 by the action of the Colorado Water Conservation Board under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S.

10. Amount of water claimed (ABSOLUTE): Instream flow of 2.9 cfs (May 1 – July 31), 1.10 cfs (August 1 – October 15), 0.45 cfs (October 16 – March 31), 1.10 cfs (April 1 – April 30).

CONCLUSIONS OF LAW

11. Notice and Jurisdiction. The Water Court for Division 1 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 required 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 2.9 cfs (May 1 – July 31), 1.10 cfs (August 1 – October 15), 0.45 cfs (October 16 – March 31), 1.10 cfs (April 1 – April 30) in order to preserve the natural environment to a reasonable decree in the reach of Como Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 23, 2008.

16. 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. The Applicant shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

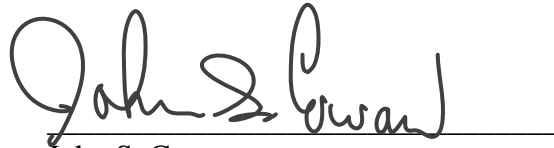
17. Pursuant to § 37-92-102(3)(b), C.R.S., the instream flow water rights for North Boulder Creek decreed in Case Nos. 94CW19 and 94CW20, as well as the instream flow water right decreed in this matter shall be subject and subordinate to the use by the University of Colorado's Mountain Research Station of a currently undecreed spring tributary to Como Creek located in the SW1/4 of Section 23, Township 1 North, Range 73 West, of the 6th P.M., up to a maximum annual depletion to Como Creek of 0.9 acre-feet as described in Appendix A. Any future augmentation plan or exchange regarding use of such spring as described in Appendix A shall not require replacement of depletions to Como Creek or North Boulder Creek, provided such depletions do not exceed 0.9 acre feet per year.

18. The limited subordination of the instream flow water right to the Objector's preexisting water use pursuant to § 37-92-102(3)(b), C.R.S., in this case shall not interfere with the administration of Objector's Mountain Research Station Spring as against other water rights; shall not result in general subordination of the CWCB's Como Creek decreed instream flow right; and shall not result in general subordination of the CWCB's North Boulder Creek instream flow rights decreed in Case Nos. 94CW19 and 94CW20, Water Division 1, to any other water rights junior to those instream flow water rights.

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: April 4, 2011

A handwritten signature in black ink, reading "John S. Cowan", written over a horizontal line.

John S. Cowan
Water Referee
Water Division 1

This document was e-filed pursuant to C.R.C.P. 121 §1-16. A printable version of the electronically signed document is available in the court's electronic file.

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: 28 April 2011

BY THE COURT:

A handwritten signature in blue ink, reading "Dinsmore Tuttle", written over a horizontal line.

Dinsmore Tuttle, Water Judge

Water Division 1

be binding on the CWCB in any future proceeding, except as described in paragraph 17 of the Proposed Decree.

3. Since at least 1993, the University of Colorado's Mountain Research Station has been using an un-decreed spring tributary to Como Creek located in the SW1/4 of Section 23, Township 1 North, Range 73 West, of the 6th P.M., as its water supply source, up to a maximum annual depletion to Como Creek of 0.9 acre-feet as described in the affidavit and letter reports attached to the Proposed Decree as Appendix A.

4. The CWCB's instream flow water rights described herein are subject to the Objector's use of the spring described in Paragraph 17 of the Proposed Decree, pursuant to section 37-92-102(3)(b). The limited subordination of the instream flow water right to the Objector's preexisting water use pursuant to section 37-92-102(3)(b) in this case shall not interfere with the administration of Objector's Mountain Research Station Spring as against other water rights, and shall not result in general subordination of the CWCB's Como Creek decreed instream flow right to any other water rights junior to that instream flow water right.

5. The CWCB's instream flow water rights on North Boulder Creek in Case Nos. 94CW19 and 94CW20, Water Division, 1 are also subject to the Objector's use of the spring described in Paragraph 17 of the Proposed Decree, pursuant to section 37-92-102(3)(b). The limited subordination of those instream flow water rights to the Objector's preexisting water use pursuant to section 37-92-102(3)(b) in this case shall not interfere with the administration of Objector's Mountain Research Station Spring as against other water rights, and shall not result in general subordination of the CWCB's North Boulder Creek decreed instream flow rights to any other water rights junior to those instream flow water rights.

6. This stipulation will be submitted to the Water Court for Water Division 1 with the request that it be approved by, and become enforceable as, an order of the court.

7. The parties will be responsible for their own attorneys' fees and costs in this matter.

Dated this 8th day of February, 2011.

JOHN W. SUTHERS
Attorney General
Attorneys for the CWCB


SCOTT STEINBRECHER, #36957

Assistant Attorney General

PORZAK BROWNING & BUSHONG, LLP

for The Regents of the University of Colorado,
a body corporate



MICHAEL F. BROWNING, 8217

Special Assistant Attorney General

929 Pearl Street, Suite 300
Boulder, CO 80302
Telephone: (303) 443-6800

**Exhibit A to STIPULATION BETWEEN THE COLORADO WATER CONSERVATION BOARD ("CWCB") AND
THE REGENTS OF THE UNIVERSITY OF COLORADO**

DISTRICT COURT WATER DIVISION 1 901-9 TH STREET GREELEY, CO 80632	DRAFT 12-14-2010
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN COMO CREEK, A NATURAL STREAM, IN THE WATERSHED OF ST. VRAIN, IN BOULDER COUNTY, COLORADO	COURT USE ONLY
	Case No. : 08CW162 Div. 1
FINDINGS AND RULING OF REFEREE AND DECREE OF THE WATER COURT	

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THE REGENTS OF THE UNIVERSITY OF COLORADO**

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7. Location:
 - a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the headwaters in the vicinity of latitude 40° 2' 22.88"N and longitude 105° 34' 0.79"W as the upstream terminus and extending to the United States Forest Service Boundary at latitude 40° 0' 51"N and longitude 105° 30' 52.89"W as the downstream terminus, being a distance of approximately 3.8 miles. This segment can be located on the Ward U.S.G.S. quadrangle.
 - b. For administrative purposes only:

Upper Terminus =
NW NE S21 T1N R73W 6th PM
1190' South of the North Section Line, 1405' West of the East Section Line
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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 on January 23, 2008 by the action of the Colorado Water Conservation Board under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S.
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**Exhibit A to STIPULATION BETWEEN THE COLORADO WATER CONSERVATION BOARD ("CWCB") AND
THE REGENTS OF THE UNIVERSITY OF COLORADO**

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 required 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 2.9 cfs (May 1 – July 31), 1.10 cfs (August 1 – October 15), 0.45 cfs (October 16 – March 31), 1.10 cfs (April 1 – April 30) in order to preserve the natural environment to a reasonable decree in the reach of Como Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 23, 2008.

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18. The limited subordination of the instream flow water right to the Objector's preexisting water use pursuant to § 37-92-102(3)(b) in this case shall not interfere with the administration of Objector's Mountain Research Station Spring as against other water rights; shall not result in general subordination of the CWCB's Como Creek decreed instream flow right; and shall not result in general subordination of the CWCB's North Boulder Creek instream flow rights decreed in Case Nos. 94CW19 and 94CW20, Water Division 1, to any other water rights junior to those instream flow water rights.

It is accordingly **ORDERED** that this Ruling shall be filed with the water clerk subject to judicial review.

**Exhibit A to STIPULATION BETWEEN THE COLORADO WATER CONSERVATION BOARD ("CWCB") AND
THE REGENTS OF THE UNIVERSITY OF COLORADO**

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 _____, 2011.

BY THE REFEREE

Water Referee
Water Division No. 1
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. 1
State of Colorado

ATTACHMENT #9



Leonard Rice Consulting Water Engineers, Inc.

2401 Fifteenth Street, Suite 300 / Denver, Colorado 80202-1143 / (303) 455-9589 • FAX (303) 455-0115

Leonard Rice
Gregg S. Ten Eyck
Leslie H. Botham
Ross Bethel
Jon R. Ford

July 1, 1993

Mr. Lee Rozakis
Hydrosphere
1002 Walnut Street
Suite 200
Boulder, CO 80302

Dear Lee:

As you requested during your meeting with Nancy Love, we are transmitting with this letter a summary of our diversion and depletion analysis for the spring that is used as a water supply for the University of Colorado Mountain Research Station. We have revised our estimates to use the SEO method of calculating lake evaporation. As a consequence, the total depletion is increased somewhat from before and now the depletion rate is nearly constant throughout the year. The nearly constant depletion rate is a consequence of the fact that waste water is stored through the winter and land applied in the summer. This stored waste water reduces the summer depletion.

If you have any questions please call our office.

Very truly yours,

LEONARD RICE CONSULTING WATER ENGINEERS, INC.


Jon R. Ford, P.E.
Principal

JRF/llb
962UCB01

cc: Nancy Love
John Bruhning

Water Rights
Ground Water
Civil Design and Construction
Water Resources Planning

APPENDIX A



#9

UNIVERSITY OF COLORADO MOUNTAIN RESEARCH STATION SW/4 SEC. 23., T.1 N., R.73 W., BOULDER COUNTY

SUMMER DEMAND

Memorial Day to Labor Day

Number of days	98
Number of Students	120
Number of Staff	24
gpd/person	60
Total Demand(gal)	846720
Total Demand(AF)	2.60

WINTER DEMAND

Balance of Year

Number of days	267
Number of Students	0
Number of Staff	15
gpd/person	60
Total Demand(gal)	240300
Total Demand(AF)	0.74

TOTAL ANNUAL DEMAND(AF) 3.34

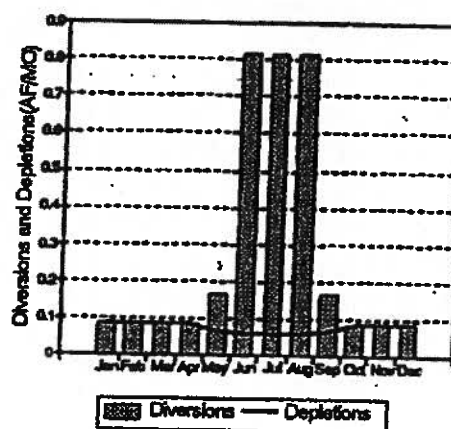
ANNUAL DEPLETION

Domestic Loss(AF/yr)	5%	0.17
Evaporation Loss(AF/yr) (1)		0.26
Spray Loss(AF/yr) (2)	15%	0.48
Plant Consumption (3)	0%	0.00

TOTAL ANNUAL DEPLETION(AF) 0.90
% Return Flow 73%

Month	Diversion	Return Flow	Depletion
(AC-FT)			
Jan	0.08	0	0.08
Feb	0.08	0	0.08
Mar	0.08	0	0.08
Apr	0.08	0	0.08
May	0.16	0.10	0.07
Jun	0.81	0.75	0.06
Jul	0.81	0.75	0.06
Aug	0.81	0.75	0.06
Sep	0.16	0.10	0.07
Oct	0.08	0	0.08
Nov	0.08	0	0.08
Dec	0.08	0	0.08
Totals	3.35	2.45	0.90

University of Colorado
Mountain Research Station



NOTES

- (1) Using SEO method for evap. off polishing pond
- (2) Spray application of waste water—includes ground evap.
- (3) Forested ET met by Precipitation — Troendle and Leaf 1980

LEONARD RICE CONSULTING WATER ENGINEERS, INC. JUNE 30, 1993 962UCB01