

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: Feb 13 2012 9:06AM MST</b> <b>Filing ID: 42462656</b> <b>Review Clerk: Darleen Cappannokeep</b>  <b>▲ COURT USE ONLY ▲</b>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN TABEGUACHE CREEK (Upper), A NATURAL STREAM, IN THE SAN MIGUEL WATERSHED,  IN MONTROSE COUNTY, COLORADO.	
	Case No. : 10CW187  Div. 4
<p align="center"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE OF THE WATER COURT</b></p>	

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 December 27, 2010. The Application was thereafter referred to the Water Referee for Water Division 4, by the Water Court for Water Division 4, 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 4, 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 June 30, 2011 and the Referee has given it due consideration.
6. Name of natural stream: Tabeguache Creek, tributary to the San Miguel River.
7. Location: The natural stream segment through which an instream flow is claimed: The natural stream channel from confluence with Fortyseven Creek as the upstream terminus and extending to the headgate of the Templeton Ditch as the downstream terminus, being a distance of approximately 5.4 miles. This segment can be located on the Uravan and Nucla U.S.G.S. quadrangles.
  - a. Upper Terminus = confluence with Fortyseven Creek  
PLSS: NE1/4 SE1/4 Section 33, Township 48 North, Range 15 West NMPM  
280' West of the East Section Line, 2129' North of the South Section Line  
UTM: Northing 4252653.7, Easting 192633.2 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 38° 22' 9.52"N and longitude 108° 31' 5.07"W
  - b. Lower Terminus = headgate of the Templeton Ditch  
PLSS: NW1/4 NW1/4 Section 1, Township 47 North, Range 16 West NMPM  
1031' West of the East Section Line, 583' North of the South Section Line  
UTM: Northing 4252047.7, Easting 186297.8 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 38° 21' 41.98"N and longitude 108° 35' 24.68"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.

Termini locations derived using CWCB's GIS system.

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 4.75 cfs (April 1 – June 30), 1.9 cfs (July 1 – November 30) and 1.6 cfs (December 1 – March 31).

## CONCLUSIONS OF LAW

11. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
12. 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. C.R.S. §§ 37-92-203 and 302.
13. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
14. 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

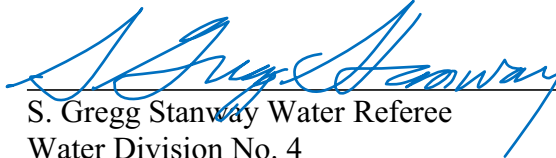
15. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee, Judgment and Decree of the Court by this reference.
16. The application is granted and a decree (ABSOLUTE) in the amount of 4.75 cfs (April 1 – June 30), 1.9 cfs (July 1 – November 30) and 1.6 cfs (December 1 – March 31) is hereby entered to preserve the natural environment to a reasonable degree in the reach of Tabeguache Creek (upper) between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.
17. This instream flow water right will be a junior water right and may not be available at all times within the ISF reach. This water right is subject to the Division Engineer's statutory administrative authority as defined by C.R.S. §§ 37-92-301 and 502(2)(a), in the context of requests for administration of this water right. Applicant shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.
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 19<sup>th</sup> day of January, 2012.

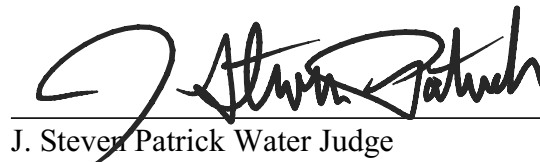
BY THE REFEREE:

  
\_\_\_\_\_  
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 13<sup>th</sup> day of Feb, 2012.

BY THE COURT

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