

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: Dec 6 2011 10:28AM MST</b> <b>Filing ID: 41240849</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 EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
	Case No. : 10CW189  Div. 4
<p align="center"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE JUDGMENT AND DECREE OF THE WATER COURT</b></p>	

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 December 27, 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 March 31, 2011 and a Supplemental Summary of Consultation dated July 27, 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 19 and 20 below.
7. Name of Natural Stream: East Beaver Creek tributary to South Beaver Creek tributary to Blue Mesa Reservoir
8. Location: The natural stream channel from the headwaters as the upstream terminus and extending to the confluence with South Beaver Creek as the downstream terminus, being a distance of approximately 6.26 miles. This segment can be located on the Spring Hill Creek U.S.G.S. quadrangle.
- a. Upper Terminus: headwaters in the vicinity of  
PLSS: SW NE Section 4, Township 46 North, Range 1 East of NMPM  
1765' West of the East Section Line, 2283' South of the North Section Line  
UTM: Northing 4238298.7, Easting 337060.8 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 38° 16' 40.70"N, longitude 106° 51' 46.20"W
  - b. Lower Terminus: confluence with South Beaver Creek at  
PLSS: SE SW Section 12, Township 47 North, Range 1 West NMPM  
1878' East of the West Section Line, 250' North of the South Section Line  
UTM: Northing 4245531.8, Easting 331914.8 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 38° 20' 31.83"N, longitude 106° 55' 24.08"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.

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 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 5.8 cfs (April 1 – July 31), 3.7 cfs (August 1 – October 31) and 2.4 cfs (November 1 – March 31), 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 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.
14. The CWCB has fulfilled all legal requirements for a decree for water rights including §§ 37-92-302, 304 and 305, C.R.S.
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 5.8 cfs (April 1 – July 31), 3.7 cfs (August 1 – October 31) and 2.4 cfs (November 1 – March 31) in order to preserve the natural environment to a reasonable degree in the reach of East Beaver Creek tributary to South Beaver Creek tributary to Blue Mesa Reservoir between the upstream and downstream terminus points described in paragraph 8 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 the historical date of appropriation and not affected by the date of entry of ruling.
19. 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 §§ 37-92-301 and 502(5)(a), C.R.S. (2010) in the context of requests for administration of this water right.

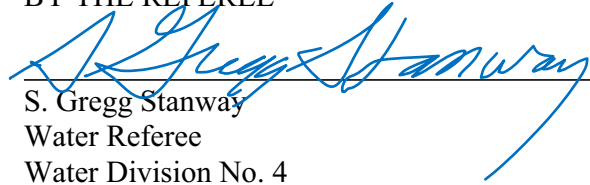
20. Pursuant to § 37-92-502(5)(a), C.R.S. (2010), the CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

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 9<sup>th</sup> day of November, 2011.

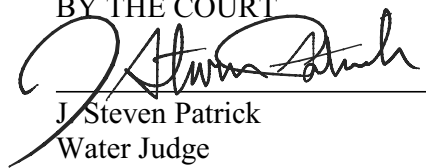
BY THE REFEREE

  
\_\_\_\_\_  
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 a Judgment and Decree of this Court.

Dated this 5<sup>th</sup> day of Dec, 2011.

BY THE COURT

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

District Court Water Division Four Colorado Court Address: 1200 N. Grand Ave., Montrose, CO 81401 (970) 252-4335 <hr/> <b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  COLORADO WATER CONSERVATION BOARD  <b>IN SAGUACHE COUNTY.</b>	<b>EFILED Document</b> <b>CO Montrose County District Court 7th JD</b> <b>Filing Date: Nov 9 2011 11:10AM MST</b> <b>Filing ID: 40804091</b> <b>Review Clerk: Darleen Cappannokeep</b>
Attorney or Party Without Attorney (Name and Address): Patrick Kowaleski  Phone Number:                      E-mail: FAX Number:                      Atty. Reg.#:	Case Number: 10CW189  Division 7 Courtroom
<b>NOTICE OF TRANSMITTAL</b>	

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office or online at [www.courts.state.co.us](http://www.courts.state.co.us) ).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

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**CERTIFICATE OF MAILING**

I certify that on November 9, 2011(date), I E-filed a copy of this Notice of Transmittal to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
 Darleen Cappannokeep,  
 Water Clerk, Div 4.

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: Nov 9 2011 10:31AM MST</b> <b>Filing ID: 40802017</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 EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
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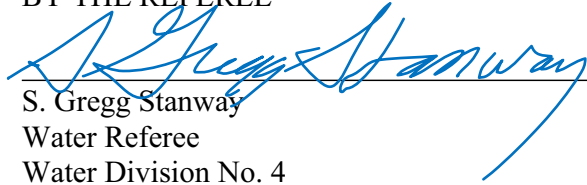
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It is accordingly **ORDERED** that this Ruling shall be filed with the water clerk subject to judicial review.

It is further **ORDERED** that a copy of this Ruling shall be filed with the Division Engineer and the State Engineer.

Dated this 9<sup>th</sup> day of November, 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.

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BY THE COURT

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J. Steven Patrick  
Water Judge  
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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: Oct 28 2011 8:45AM MDT</b> <b>Filing ID: 40603360</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 EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
Attorneys for the Colorado Water Conservation Board:  JOHN W. SUTHERS, Attorney General PATRICK E. KOWALESKI, Senior Assistant Attorney General* 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Telephone: (303) 866-5020 Registration Number: 09598 *Counsel of Record Email: <a href="mailto:Patrick.Kowaleski@state.co.us">Patrick.Kowaleski@state.co.us</a>	Case No. : 10CW189  Div. 4
<b>MOTION TO ENTER FINDINGS AND RULING OF REFEREE AND DECREE OF THE WATER COURT</b>	

Applicant, the Colorado Water Conservation Board ("CWCB"), through its undersigned counsel moves this court to enter the attached Findings and Ruling of Referee and Decree of the Water Court ("Decree"), and as grounds states as follows:

1. The Application was filed in this matter by the CWCB on December 27, 2010.
2. No Statements of Opposition were filed in this matter and the time for filing Statements of Opposition has expired.
3. The Division Engineer for Water Division Four filed a Summary of Consultation on March 31, 2011 and a supplemental Summary of Consultation on July 27, 2011. The CWCB has addressed all of the concerns of the Division Engineer.

WHEREFORE the CWCB moves this court to enter the attached Findings and Ruling of the Referee and Decree of the Water Court.

Dated this 28<sup>th</sup> day of October, 2011.

JOHN W. SUTHERS  
Attorney General

*E-filed pursuant to C.R.C.P. 121. Duly signed  
original on file at the Office of the Attorney  
General.*

*/s/ Patrick E. Kowaleski*

\_\_\_\_\_  
PATRICK E. KOWALESKI #09598  
Senior Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for CWCB  
Counsel of Record

#### CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2011, I served a true and correct copy of the Motion for Entry of Ruling, together with all attachments via LexisNexis file and serve to each of the following:

<b><u>Party Name</u></b>	<b><u>Party Type</u></b>	<b><u>Attorney</u></b>	<b><u>Firm</u></b>
<a href="#"><u>COLORADO DIVISION OF WATER RESOURCES</u></a>	State Engineer	State Water Engineer, Colorado	State Engineers Office
<a href="#"><u>DIVISION 4 WATER ENGINEER</u></a>	Division Engineer	Water Engineer, Division 4	Division 4 Engineer

*/s/ Holly A. Archer*

\_\_\_\_\_

*E-filed pursuant to CRCP 121. Duly signed original on file at the Office of the Attorney General*

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: Oct 28 2011 8:45AM MDT</b> <b>Filing ID: 40603360</b> <b>Review Clerk: Darleen Cappannokeep</b>  <b>COURT USE ONLY</b>
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It is accordingly **ORDERED** that this Ruling shall be filed with the water clerk subject to judicial review.

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT

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



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

CONSULTATION REPORT/RECOMMENDATION

of the

DIVISION ENGINEER

Pursuant to C.R.S. 37-92-302(4)

EDPA File Document

CO Montrose County District Court 7th JD

Filing Date: Jul 27 2011 10:59 AM MDT

Filing ID: 38924025

Review Clerk: Jodi A. Hanson

John W. Hickenlooper  
Governor

Mike Engle  
Executive Director

Rich Wolfe, P.E.  
Director/State Engineer

Bob W. Hurford, P.E.  
Division Engineer

CASE NO: 10CW189

COUNTY: Saguache

DISTRICT: 62

APPLICANTS: Colorado Water Conservation Board

APPLICATION DATE: 12/27/2010

FIELD INSPECTION DATE: 01/25/11

INITIAL CONSULTATION DATE: 03/31/2011

This supplemental consultation is written to document revised recommendations of the Division Engineer pursuant to additional information supplied by the Applicant (CWCB). In the initial consultation this office raised concerns that the mean of the calculated hydrographs for this reach of East Beaver Creek are below the requested amounts for certain periods of the year. Based on this, the initial consultation recommended approval of the Application with slight changes to the time periods applied for. The additional hydrograph information submitted by the CWCB shows that although the requested amounts are above the mean they are below the maximum amount that may be available in this reach of East Beaver Creek. As a result, water may have been available to meet the requested amounts in the past, but it is unclear how often the requested amounts will be available in the future.

Based on the submitted information, the Division Engineer now does not object to entry of a decree as applied for. However, due to uncertainty regarding flow availability we recommend that any decree entered for this ISF include the following terms and conditions:

1. Based upon a hydrograph prepared using gage data from Cochetopa Creek (USGS 09108450) and field observations, it appears that during certain periods water may not be available to meet the flow amounts in this decree. Therefore, the requested flow for the ISF water right, as decreed herein, will not be available at all times and locations within the ISF reach.
2. The Division Engineer will only 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.

/s/Jason T. Ullmann

Jason T. Ullmann, P.E., Assistant Division Engineer for

Bob W. Hurford, P.E., Division Engineer

7/27/2011

Date

JTU

Water Division 4 • Montrose

P. O. Box 456 (1871 East Main Street) • Montrose, CO 81402 • Phone: 970-249-6622 • Fax: 970-249-8728

www.water.state.co.us



DISTRICT COURT, WATER DIVISION NO. IV, STATE OF COLORADO

IN THE MATTER OF APPLICATION NO. 10CW189

APPLICANTS: COLORADO WATER CONSERVATION BOARD

Pursuant to Section 37-92-302(4) CRS (Amended 1988), enclosed please find a copy of the Division Engineer's report that was e-filed with the Water Referee on July 27, 2011 in the above referenced matter.

CERTIFICATE OF SERVICE

This is to certify that on July 27, 2011 Lexis-Nexis will duly serve the attached consultation of the Division Engineer upon the following:

Patrick E. Kowaleski  
Assistant Attorney General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

/s/ Gina L. DeArcos

Gina L. DeArcos  
Division of Water Resources  
Division IV

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: Jun 29 2011 11:14AM MDT</b> <b>Filing ID: 38418420</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 EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
Attorneys for the Colorado Water Conservation Board:  JOHN W. SUTHERS, Attorney General PATRICK E. KOWALESKI, Assistant Attorney General* 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Telephone: (303) 866-5020 Registration Number: 09598 *Counsel of Record Email: <a href="mailto:Patrick.Kowaleski@state.co.us">Patrick.Kowaleski@state.co.us</a>	Case No. : 10CW189  Div. 4
<p style="text-align: center;"><b>STATUS REPORT</b></p>	

On May 26, 2011 the Court filed a Minute Order requiring that on or before June 29, 2011, the Applicant, Colorado Water Conservation Board (“CWCB”), either file a proposed order or a status report with the court. As the CWCB has not yet filed a proposed decree, the following status report is provided:

The CWCB has been coordinating with the Division Engineer to resolve issues expressed in the summary of consultation. In addition, the CWCB’s hydrologist recently compiled additional information on the CWCB’s water availability analysis to respond to the issues raised in the Engineer’s Consultation. That information was presented to the Division Engineer on June 27, 2011, so the Division Engineer has not had opportunity to review and comment on the materials. The CWCB is hopeful that the materials presented will allow the Engineer to recommend the approval of the CWCB’s requested instream flow, in the amounts claimed in the application.

Dated this 29<sup>th</sup> day of June, 2011.

JOHN W. SUTHERS  
Attorney General

*E-filed pursuant to C.R.C.P. 121. Duly signed  
original on file at the Office of the Attorney  
General.*

*/s/ Patrick E. Kowaleski*

---

PATRICK E. KOWALESKI #09598  
Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for CWCB  
Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2011, I served a true and correct copy of the Status Report, together with all attachments via LexisNexis file and serve to each of the following:

<b><u>Party Name</u></b>	<b><u>Party Type</u></b>	<b><u>Attorney</u></b>	<b><u>Firm</u></b>
<a href="#"><u>COLORADO DIVISION OF WATER RESOURCES</u></a>	State Engineer	State Water Engineer, Colorado	State Engineers Office
<a href="#"><u>DIVISION 4 WATER ENGINEER</u></a>	Division Engineer	Water Engineer, Division 4	Division 4 Engineer

*/s/ Holly A. Archer*


---

*E-filed pursuant to CRCP 121. Duly signed original on file at the Office of the Attorney General*

<p>DISTRICT COURT, WATER DIVISION 4, COLORADO</p> <p>Court Address: 1200 N. Grand Ave., Bin A Montrose, CO 81401-3146</p> <hr/> <p>IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF</p> <p>COLORADO WATER CONSERVATION BOARD</p> <p>IN SAGUACHE COUNTY</p>		<p><b>FILED Document</b>  <b>CO Montrose County District Court 7th JD</b>  <b>Filing Date: May 26 2011 1:49PM MDT</b>  <b>Filing ID: 37820871</b>  <b>Review Clerk: N/A</b></p> <hr/> <p><b>Case Number: 10CW189</b></p>
<p align="center"><b>MINUTE ORDER REGARDING CASE STATUS</b></p>		

As the Court has received a Summary of Consultation in this matter dated March 31, 2011 the Applicant is hereby ordered to either file a proposed order or status report with the Court on or before June 29, 2011.

Done this 26<sup>th</sup> day of May, 2011.

  
 S. Gregg Stairway  
 Water Referee



**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.

**Stephen G. Stanway**  
**Water Referee**

DATE OF ORDER INDICATED ON ATTACHMENT

Montrose, CO 81401  
(970) 252-4335

**CONCERNING THE APPLICATION FOR WATER RIGHTS OF:**

**COLORADO WATER CONSERVATION BOARD**

**IN SAGUACHE COUNTY**

Attorney or Party Without Attorney (Name and Address):

FAX Number: Atty.  
Phone Number: E-mail: Reg.#:

**FILED Document**  
**CO Montrose County District Court 7th JD**  
**Filing Date: May 3 2011 2:52PM MDT**  
**Filing ID: 37380403**  
**Review Clerk: N/A**

Case Number: 10CW189

Division 7 Courtroom

**ORDER FOR EXTENSION OF TIME**

IT APPEARING TO THE COURT, on the applications filed in Division No. 4 that it is impossible to approve or disapprove, or in some cases, get copies forwarded to applicants before the due date, due to various circumstances.

IT IS THEREFORE, ORDERED BY THE COURT, that the applications filed in **December, 2010**, which may not meet the deadline, remain under the jurisdiction of the Water Referee until it is possible to complete same, or until the referee shall decide to re-refer it to the Judge.

S. Gregg Stanway  
S. Gregg Stanway  
Water Referee

**CERTIFICATE OF MAILING**

I certify that I mailed, faxed, e-filed, or hand-delivered a copy of this Order for Extension of time to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
Water Clerk

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

**Court:** CO Montrose County District Court 7th JD

**Judge:** stephen gregg stanway

**Alternate Judge:** James Steven Patrick

**File & Serve**

**Transaction ID:** 37353034

**Current Date:** May 03, 2011

**Case Number:** 2010CW189

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

---

/s/ Judge stephen gregg stanway

District Court Water Division Four, Colorado Court Address: 1200 N. Grand Ave., Montrose, CO 81401 (970) 252-4335	<b>FILED Document</b> <b>CO Montrose County District Court 7th JD</b> <b>Filing Date: May 2 2011 2:36PM MDT</b> <b>Filing ID: 37353034</b> <b>Review Clerk: N/A</b>
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD</b>  <b>IN SAGUACHE COUNTY</b>	
Attorney or Party Without Attorney (Name and Address):   FAX Number:                      Atty. Phone Number:                      E-mail: Reg.#:	Case Number: 10CW189   Division      7              Courtroom
<b>ORDER FOR EXTENSION OF TIME</b>	

IT APPEARING TO THE COURT, on the applications filed in Division No. 4 that it is impossible to approve or disapprove, or in some cases, get copies forwarded to applicants before the due date, due to various circumstances.

IT IS THEREFORE, ORDERED BY THE COURT, that the applications filed in **December, 2010**, which may not meet the deadline, remain under the jurisdiction of the Water Referee until it is possible to complete same, or until the referee shall decide to re-refer it to the Judge.

S. Gregg Stanway  
 S. Gregg Stanway  
 Water Referee

---

### CERTIFICATE OF MAILING

I certify that I mailed, faxed, e-filed, or hand-delivered a copy of this Order for Extension of time to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
 Water Clerk



DEPARTMENT OF NATURAL RESOURCES

# DIVISION OF WATER RESOURCES

CONSULTATION REPORT/RECOMMENDATION

of the

DIVISION ENGINEER

Pursuant to C.R.S. 37-92-302(4)

EDPA File Document

CO Montrose County District Court 7th JD

Filing Date: Mar 31 2011 4:48 PM MDT

Filing ID: 36795339

Review Clerk: Darleen Cappanone

John W. Hickenlooper  
Governor

Mike Kling

Executive Director

Clk Wolk, P.E.

Director/State Engineer

Bob W. Hurford, P.E.  
Division Engineer

CASE NO: 10CW189

COUNTY: Saguache

DISTRICT: 62

APPLICANTS: Colorado Water Conservation Board

APPLICATION DATE: 12/27/2010

FIELD INSPECTION DATE: 01/25/11

The applicants are seeking an absolute, minimum instream flow (ISF) right on East Beaver Creek. The reach of this instream flow right is from the upstream terminus at the headwaters of East Beaver Creek to the downstream terminus at the confluence with South Beaver Creek.

Prior to filing, this application was forwarded to our office by CWCB for comment. The following comments provided by our office, in an e-mail dated October 25, 2010, were not addressed in the Application:

1. Based on a review of the water availability hydrographs in the Executive Summary, prepared for the CWCB Board by their Staff, it appears that the requested ISF flows are greater than the calculated mean flow on some dates. As such, we requested a revision to the 5.8 cfs flow period (April 22<sup>nd</sup> to July 31<sup>st</sup> instead of April 1<sup>st</sup> to July 31<sup>st</sup>) and a corresponding revision to the 2.4 cfs flow period (November 1<sup>st</sup> to April 21<sup>st</sup> instead of November 1<sup>st</sup> to March 31<sup>st</sup>).
2. Based on a review of the same executive summary data, it appears that the 3.7 cfs amount for August 1<sup>st</sup> to October 31<sup>st</sup> should be reduced to 3.25 cfs since the calculated mean flow on many of the days during this period do not meet the 3.7 cfs proposed amount.

As a result, recommend approval of a minimum instream flow right to include 5.80 cfs absolute (*April 22<sup>nd</sup> through July 31<sup>st</sup>*), 3.25 cfs absolute (*August 1<sup>st</sup> through October 31<sup>st</sup>*), and 2.40 cfs absolute (*November 1<sup>st</sup> through April 21<sup>st</sup>*), with an appropriation date of January 26, 2010.

/s/Jason T. Ullmann

Jason T. Ullmann, P.E., Assistant Division Engineer for

Bob W. Hurford, P.E., Division Engineer

3/31/2011

Date

JTU:ejw

Water Division 4 • Montrose

P. O. Box 456 (1871 East Main Street) • Montrose, CO 81402 • Phone: 970-249-6622 • Fax: 970-249-8728

www.water.state.co.us



DISTRICT COURT, WATER DIVISION NO. IV, STATE OF COLORADO

IN THE MATTER OF APPLICATION NO. 10CW189

APPLICANTS: COLORADO WATER CONSERVATION BOARD

Pursuant to Section 37-92-302(4) CRS (Amended 1988), enclosed please find a copy of the Division Engineer's report that was e-filed with the Water Referee on March 31, 2011 in the above referenced matter.



CERTIFICATE OF SERVICE

This is to certify that on March 31, 2011 Lexis-Nexis will duly serve the attached consultation of the Division Engineer upon the following:

Patrick E. Kowaleski  
Assistant Attorney General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

/s/ Gina L. DeArcos

Gina L. DeArcos  
Division of Water Resources  
Division IV

District Court Water Division Court Address: 1200 N. G Montrose, CO 81401 (970) 252-4335		<h1 style="text-align: center;">GRANTED</h1>	<div style="text-align: right;">  </div> <p><b>J. Steven Patrick</b>  <b>District Court Judge</b>  <small>DATE OF ORDER INDICATED ON ATTACHMENT</small></p>
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b></p> <p><b>COLORADO WATER CONSERVATION BOARD</b></p> <p><b>IN SAGUACHE COUNTY.</b></p>		<p><b>EFILED Document</b>  <b>CO Montrose County District Court 7th JD</b>  <b>Filing Date: Mar 8 2011 9:18AM MST</b>  <b>Filing ID: 36335753</b>  <b>Review Clerk: N/A</b></p>	
Attorney or Party Without Attorney (Name and Address):      Phone Number:                      E-mail: FAX Number:                        Atty. Reg.#:		Case Number: 10CW189      Division 7 Courtroom	
<p style="text-align: center;"><b>ORDER OF REFERRAL</b></p>			

It is Ordered that the above case be and is referred to the Water Referee for Water Division Four pursuant to statute.

J. Steven Patrick  
 J. Steven Patrick  
 Water Judge

---

## CERTIFICATE OF MAILING

I certify that I mailed, faxed, e-filed, or hand-delivered a copy of this Order for Referral to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
 Water Clerk

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

**Court:** CO Montrose County District Court 7th JD

**Judge:** stephen gregg stanway

**Alternate Judge:** James Steven Patrick

**File & Serve**

**Transaction ID:** 36326116

**Current Date:** Mar 08, 2011

**Case Number:** 2010CW189

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

**Court Authorizer:** James Steven Patrick

District Court Water Division Four, Colorado Court Address: 1200 N. Grand Ave., Montrose, CO 81401 (970) 252-4335	<b>FILED Document</b> <b>CO Montrose County District Court 7th JD</b> <b>Filing Date: Mar 7 2011 4:08PM MST</b> <b>Filing ID: 36326116</b> <b>Review Clerk: N/A</b>
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD</b>  <b>IN SAGUACHE COUNTY.</b>	
Attorney or Party Without Attorney (Name and Address):      Phone Number:                      E-mail: FAX Number:                        Atty. Reg.#:	Case Number: 10CW189      Division 7 Courtroom
<b>ORDER OF REFERRAL</b>	

It is Ordered that the above case be and is referred to the Water Referee for Water Division Four pursuant to statute.

J. Steven Patrick  
 J. Steven Patrick  
 Water Judge

---

## CERTIFICATE OF MAILING

I certify that I mailed, faxed, e-filed, or hand-delivered a copy of this Order for Referral to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
 Water Clerk

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 11 2011 3:46PM MST</b> <b>Filing ID: 35912046</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 EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
Attorneys for the Colorado Water Conservation Board:  JOHN W. SUTHERS, Attorney General PATRICK E. KOWALESKI, Assistant Attorney General* 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Telephone: (303) 866-5020 Registration Number: 09598 *Counsel of Record Email: <a href="mailto:Patrick.Kowaleski@state.co.us">Patrick.Kowaleski@state.co.us</a>	Case No. : 10CW189  Div. 4
<b>CERTIFICATE OF SERVICE: PROOF OF PUBLICATION</b>	

The Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree in this case was published in the Crested Butte News. The Proof of Publication is attached. The costs of publication have been paid.

Dated this 11<sup>th</sup> day of February, 2011.

JOHN W. SUTHERS  
Attorney General

*E-filed pursuant to C.R.C.P. 121. Duly signed  
original on file at the Office of the Attorney  
General.*

*/s/ Patrick E. Kowaleski*

\_\_\_\_\_  
PATRICK E. KOWALESKI #09598  
Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for CWCB  
Counsel of Record

## CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2011, I served a true and correct copy of the Certificate of Service: Proof of Publication, together with all attachments via LexisNexis file and serve to each of the following:

<b><u>Party Name</u></b>	<b><u>Party Type</u></b>	<b><u>Attorney</u></b>	<b><u>Firm</u></b>
<a href="#"><u>COLORADO DIVISION OF WATER RESOURCES</u></a>	State Engineer	State Water Engineer, Colorado	State Engineers Office
<a href="#"><u>DIVISION 4 WATER ENGINEER</u></a>	Division Engineer	Water Engineer, Division 4	Division 4 Engineer

/s/ Holly A. Archer

---

*E-filed pursuant to CRCP 121. Duly signed original on file at the Office of the Attorney General*

FOR BILLING DEPARTMENT:

Agency: Water Division No. 4  
Department: Cold Water Cons. Board  
Publication Date: 1/14/11  
Ad Description: Case # 1000189  
Cost: 7590

FILED Document  
CO Montrose County District Court 7th JD  
Filing Date: Feb 11 2011 3:46PM MST  
Filing ID: 35912046  
Review Clerk: Darleen Cappannokeep

PROOF OF PUBLICATION

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

I, Melissa Ruch, certify that:

I am the publisher of the Crested Butte Chronicle & Pilot/CB News, a newspaper of general circulation published in Crested Butte (printed in Salida) in said State and County:

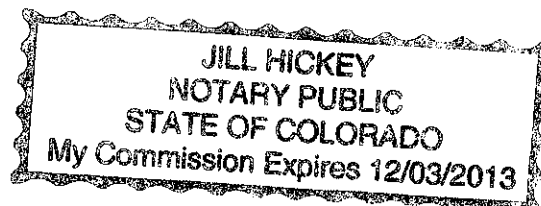
The attached advertisement, which is a printed copy taken from said newspaper, was published in said newspaper on the 14 day of January, 2011; and

said advertisement was published in said newspaper proper and not in any supplement thereof:

[Signature]  
Signature

Subscribed and sworn before me this 31 day of January, 2011  
by Melissa Ruch.

[Signature]  
Notary Public



# Legals

## —IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4—

### STATE OF COLORADO

#### TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of December, 2010.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows:

**CASE NO. 2010CW189. APPLICATION FOR WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE OF THE COLORADO WATER CONSERVATION BOARD, IN EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED, IN SAGUACHE COUNTY, COLORADO.** 1. Name of Applicant: Colorado Water Conservation Board ("CWCBC"), Address of Applicant: 1313 Sherman Street, Suite 721, Denver, CO 80203, (303) 866-3441, c/o Patrick E. Kowaleski, Assistant Attorney General, 1525 Sherman Street, 7th Floor, Denver, Colorado, 80203. 2. Name of natural stream: East Beaver Creek tributary to South Beaver Creek tributary to Blue Mesa Reservoir. 3. 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 38° 16' 40.70" N and longitude 106° 51' 46.20" W as the upstream terminus

and extending to the confluence with South Beaver Creek at latitude 38° 20' 31.83" N and longitude 106° 55' 24.08" W as the downstream terminus, being a distance of approximately 6.26 miles. This segment can be located on the Spring Hill Creek U.S.G.S. quadrangle. b. For administrative purposes only: Upper Terminus = SW NE S4 T46N R1E NMPM 1765 West of the East Section Line, 2283 South of the North Section Line UTM North: 4238298.7 UTM East: 337060.8 Lower Terminus = SE SW S12 T47N R1W NMPM 1878 East of the West Section Line, 250 North of the South Section Line UTM North: 4245531.8 UTM East: 331914.8 4. Date of initiation of appropriation and beneficial use: January 26, 2010. Under section 37-92-103(4), C.R.S. (2010), the definition of beneficial use includes "the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Section 37-92-102(3) (c) states that the CWCBC "shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation" to be made. Section 37-92-102(4) (a) states that the CWCBC "may, in its discretion, determine whether or not to appropriate minimum



stream flows or natural lake levels" to preserve the natural environment to a reasonable degree. Thus, the appropriation of an instream flow right "in the manner prescribed by law" and the "beneficial use" of an instream flow right under section 37-92-103(4) both occur when the CWCBC declares its intent to appropriate. In this case, the CWCBC declared its intent to appropriate instream flow water rights during its public meeting on January 26, 2010. 5. Amount of water claimed (ABSOLUTE): instream flow of 5.8 cfs (April 1 - July 31), 3.7 cfs (August 1 - October 31) and 2.4 cfs (November 1 - March 31). 6. Remarks: The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 18, 2010, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. 7. This Application is for an instream flow water right, exclusive to the CWCBC pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in

section 37-90-137(4), C.R.S. See *City of Thornton Bay and Through Utilities Bd. v. City of Fort Collins*, 830 P.2d 915, 931 (Colo., 1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice requirements in section 37-92-302(2) (b) do not apply. **SAGUACHE COUNTY.**

**YOU ARE FURTHER NOTIFIED THAT** you have until the last day of February, 2011 to file with the Water Clerk, in duplicate, a Verified Statement of Opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$158.00; Forms may be obtained from the Water Clerk's Office or on our website at [www.courts.state.co.us](http://www.courts.state.co.us)). **DARLEEN CAPPANNOKEEP**, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401

Published in the *Crested Butte News*, issue of January 14, 2011, #011405



District Court Water Division Court Address: 1200 N. G Montrose, CO 81401 (970) 252-4335		<h1 style="text-align: center;">GRANTED</h1>	<div style="text-align: right;">  </div> <p><b>J. Steven Patrick</b>  <b>District Court Judge</b>  <small>DATE OF ORDER INDICATED ON ATTACHMENT</small></p>
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD</b>  <b>IN <u>SAGUACHE</u> COUNTY.</b>			<p><b>FILED Document</b>  <b>CO Montrose County District Court 7th JD</b>  <b>Filing Date: Jan 11 2011 2:32PM MST</b>  <b>Filing ID: 35317928</b>  <b>Review Clerk: N/A</b></p> <p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p>
Attorney or Party Without Attorney (Name and Address):      Phone Number:                      E-mail: FAX Number:                        Atty. Reg.#:			Case Number: 10CW189      Division    7                      Courtroom
<b>ORDER FOR PUBLICATION</b>			

It is Ordered that the notice in the resume of the above case be published once in the Crested Butte News, it having been determined by the undersigned that such newspaper(s) has/have general circulation in every county affected.

It is further Ordered that Applicant(s) shall pay the cost of publication upon the news paper tendering an invoice after publication has been effected. **IT IS THE RESPONSIBILITY OF THE APPLICANT TO FILE THE AFFIDAVIT OF PUBLICATION WITH THE COURT. FAILURE TO FILE THE AFFIDAVIT WILL DELAY A RULING.**

J. Steven Patrick  
 J. Steven Patrick  
 Water Judge

## CERTIFICATE OF MAILING

I certify that I mailed, faxed, e-filed, or hand-delivered a copy of this Order for Publication to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
 Water Clerk

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

**Court:** CO Montrose County District Court 7th JD

**Judge:** stephen gregg stanway

**Alternate Judge:** James Steven Patrick

**File & Serve**

**Transaction ID:** 35313941

**Current Date:** Jan 11, 2011

**Case Number:** 2010CW189

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

**Court Authorizer:** James Steven Patrick

District Court Water Division Four Colorado Court Address: 1200 N. Grand Ave., Montrose, CO 81401 (970) 252-4335	<b>FILED Document</b> <b>CO Montrose County District Court 7th JD</b> <b>Filing Date: Jan 11 2011 1:08PM MST</b> <b>Filing ID: 35313941</b> <b>Review Clerk: N/A</b> <div style="text-align: center;">▲ COURT USE ONLY ▲</div>
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD</b>  <b>IN <u>SAGUACHE</u> COUNTY.</b>	
Attorney or Party Without Attorney (Name and Address):      Phone Number:                      E-mail: FAX Number:                        Atty. Reg.#:	Case Number: 10CW189      Division    7                      Courtroom
<b>ORDER FOR PUBLICATION</b>	

It is Ordered that the notice in the resume of the above case be published once in the Crested Butte News, it having been determined by the undersigned that such newspaper(s) has/have general circulation in every county affected.

It is further Ordered that Applicant(s) shall pay the cost of publication upon the news paper tendering an invoice after publication has been effected. **IT IS THE RESPONSIBILITY OF THE APPLICANT TO FILE THE AFFIDAVIT OF PUBLICATION WITH THE COURT. FAILURE TO FILE THE AFFIDAVIT WILL DELAY A RULING.**

J. Steven Patrick  
 J. Steven Patrick  
 Water Judge

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### CERTIFICATE OF MAILING

I certify that I mailed, faxed, e-filed, or hand-delivered a copy of this Order for Publication to the Applicant or their attorney and the state and division engineers.

Darleen Cappannokeep  
 Water Clerk

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: Dec 27 2010 4:30PM MST</b> <b>Filing ID: 35066816</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 EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
Attorneys for the Colorado Water Conservation Board:  JOHN W. SUTHERS, Attorney General PATRICK E. KOWALESKI, Assistant Attorney General* 1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 (303) 866-5020 Registration Number: 09598 *Counsel of Record Email: <a href="mailto:Patrick.Kowaleski@state.co.us">Patrick.Kowaleski@state.co.us</a>	Case No. : 10CW____  Div. 4
<p style="text-align: center;"><b>APPLICATION FOR WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE</b></p>	

1.     Name of Applicant:                     Colorado Water Conservation Board (“CWCB”)

Address of Applicant:                     1313 Sherman Street, Suite 721  
Denver, CO 80203  
(303) 866-3441
2.     Name of natural stream:             East Beaver Creek tributary to South Beaver Creek  
tributary to Blue Mesa Reservoir
3.     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 38° 16’ 40.70”N and longitude 106° 51’ 46.20”W as the upstream terminus and extending to the confluence with South Beaver Creek at latitude 38° 20’ 31.83”N and longitude 106° 55’ 24.08”W as the downstream terminus, being a distance of approximately 6.26 miles. This segment can be located on the Spring Hill Creek U.S.G.S. quadrangle.

- b. For administrative purposes only:

Upper Terminus =

SW NE S4 T46N R1E NMPM

1765' West of the East Section Line, 2283' South of the North Section Line

UTM North: 4238298.7 UTM East: 337060.8

Lower Terminus =

SE SW S12 T47N R1W NMPM

1878' East of the West Section Line, 250' North of the South Section Line

UTM North: 4245531.8 UTM East: 331914.8

4. Date of initiation of appropriation and beneficial use: January 26, 2010. Under section 37-92-103(4), C.R.S. (2010), the definition of beneficial use includes "the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Section 37-92-102(3)(c) states that the CWCB "shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation" to be made. Section 37-92-102(4)(a) states that the CWCB, "may, in its discretion, determine whether or not to appropriate minimum stream flows or natural lake levels" to preserve the natural environment to a reasonable degree. Thus, the appropriation of an instream flow right "in the manner prescribed by law," and the "beneficial use" of an instream flow right under section 37-92-103(4) both occur when the CWCB declares its intent to appropriate. In this case, the CWCB declared its intent to appropriate instream flow water rights during its public meeting on January 26, 2010.
5. Amount of water claimed (ABSOLUTE): Instream flow of 5.8 cfs (April 1 – July 31), 3.7 cfs (August 1 – October 31) and 2.4 cfs (November 1 – March 31).
6. Remarks: The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 18, 2010, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights.
7. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice requirements in section 37-92-302(2)(b) do not apply.

Submitted this 27<sup>th</sup> day of December, 2010.

JOHN W. SUTHERS  
Attorney General

*E-filed pursuant to C.R.C.P. 121. Duly signed  
original on file at the Office of the Attorney  
General.*

*/s/ Patrick E. Kowaleski*


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PATRICK E. KOWALESKI, #09598  
Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for CWCB  
Counsel of Record

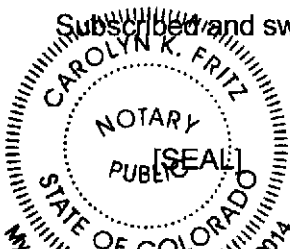
**FILED Document**  
**CO Montrose County District Court 7th JD**  
**Filing Date: Dec 27 2010 4:30PM MST**  
**Filing ID: 35066816**  
**Review Clerk: Darleen Cappannokeep**

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Jennifer Gimbel, for the Colorado Water Conservation Board, being duly sworn, hereby state that I have read the foregoing application and that the contents are true to the best of my knowledge and belief.

  
JENNIFER GIMBEL  
DIRECTOR  
COLORADO WATER CONSERVATION BOARD

Subscribed and sworn to before me this 20<sup>th</sup> day of December, 2010.



  
NOTARY PUBLIC

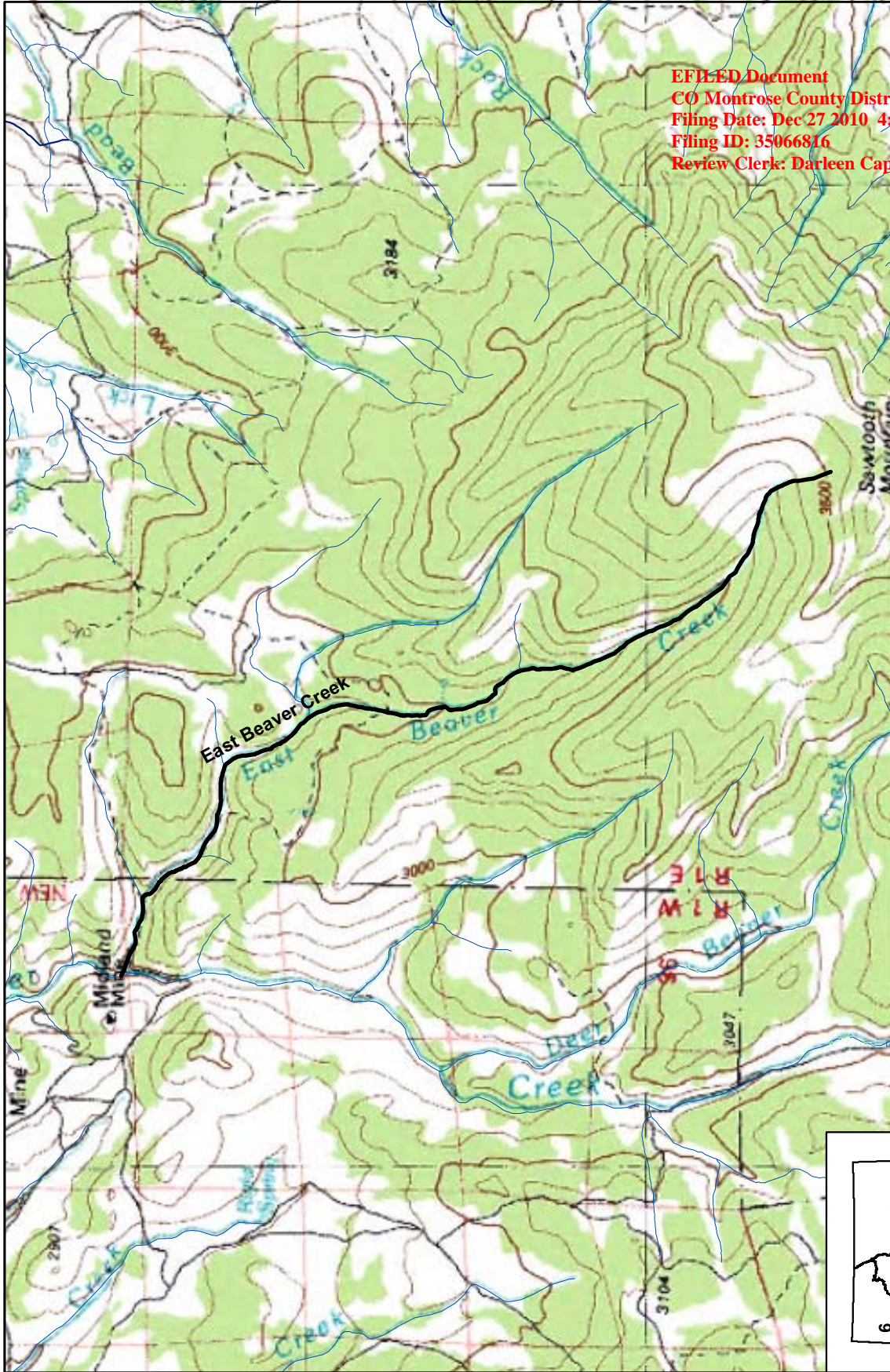
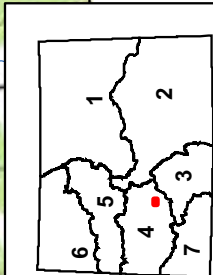
My Commission Expires 11-6-2014



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CO Montrose County District Court 721 FD  
Filing Date: Dec 27 2010 4:30PM MST  
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Review Clerk: Darleen Cappannokeep



East Beaver Creek - Water Division 4





Case No. 10CW , APPLICATION FOR WATER RIGHTS TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE of the COLORADO WATER CONSERVATION BOARD, IN EAST BEAVER CREEK, A NATURAL STREAM, IN THE UPPER GUNNISON WATERSHED, IN SAGUACHE COUNTY, COLORADO. 1. Name of Applicant: ~~Colorado Water Conservation Board ("CWCB")~~, Address of Applicant: 1313 Sherman Street, Suite 721, Denver, CO 80203, (303) 866-3441, c/o Patrick E. Kowaleski, Assistant Attorney General, 1525 Sherman Street, 7<sup>th</sup> Floor, Denver, Colorado 80203. 2. Name of natural stream: East Beaver Creek tributary to South Beaver Creek tributary to Blue Mesa Reservoir. 3. 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 38° 16' 40.70"N and longitude 106° 51' 46.20"W as the upstream terminus and extending to the confluence with South Beaver Creek at latitude 38° 20' 31.83"N and longitude 106° 55' 24.08"W as the downstream terminus, being a distance of approximately 6.26 miles. This segment can be located on the Spring Hill Creek U.S.G.S. quadrangle. b. For administrative purposes only: Upper Terminus = SW NE S4 T46N R1E NMPM 1765' West of the East Section Line, 2283' South of the North Section Line UTM North: 4238298.7 UTM East: 337060.8 Lower Terminus = SE SW S12 T47N R1W NMPM 1878' East of the West Section Line, 250' North of the South Section Line UTM North: 4245531.8 UTM East: 331914.8 4. Date of initiation of appropriation and beneficial use: January 26, 2010. Under section 37-92-103(4), C.R.S. (2010), the definition of beneficial use includes "the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Section 37-92-102(3)(c) states that the CWCB "shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation" to be made. Section 37-92-102(4)(a) states that the CWCB, "may, in its discretion, determine whether or not to appropriate minimum stream flows or natural lake levels" to preserve the natural environment to a reasonable degree. Thus, the appropriation of an instream flow right "in the manner prescribed by law," and the "beneficial use" of an instream flow right under section 37-92-103(4) both occur when the CWCB declares its intent to appropriate. In this case, the CWCB declared its intent to appropriate instream flow water rights during its public meeting on January 26, 2010. 5. Amount of water claimed (ABSOLUTE): Instream flow of 5.8 cfs (April 1 – July 31), 3.7 cfs (August 1 – October 31) and 2.4 cfs (November 1 – March 31). 6. Remarks: The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 18, 2010, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. 7. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice requirements in section 37-92-302(2)(b) do not apply.