

DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	EFILED Document CO Montrose County District Court 7th JD Filing Date: Dec 6 2011 10:28AM MST Filing ID: 41240849 Review Clerk: Darleen Cappannokeep COURT USE ONLY
Concerning the Application for Water Rights of: 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
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 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.

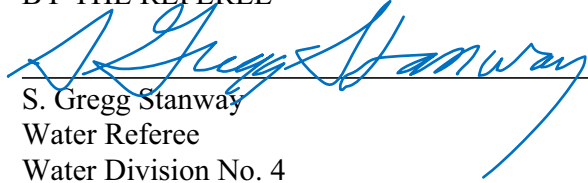
20. Pursuant to § 37-92-502(5)(a), C.R.S. (2010), the CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

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 9th day of November, 2011.

BY THE REFEREE

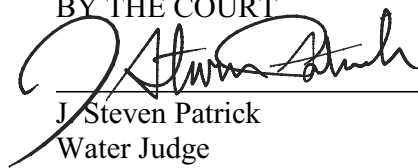


S. Gregg Stanway
Water Referee
Water Division No. 4
State of Colorado

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 5th day of Dec, 2011.

BY THE COURT



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