

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: May 31 2011 11:21AM MDT Filing ID: 37867668 Review Clerk: Darleen Cappannokeep COURT USE ONLY
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN COCHETOPA CREEK (Upper), A NATURAL STREAM, IN THE TOMICHI WATERSHED, IN SAGUACHE COUNTY, COLORADO.	
	Case No. : 10CW133 Div. 4
<p align="center">FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE JUDGMENT AND DECREE OF THE WATER COURT</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 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. 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. Applications: The CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on October 28, 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 10, 2011 recommending approval of the application but noting a slight error in the legal description of the lower terminus of the water right. Such error has been addressed in this decree. The Referee has considered the Summary of Consultation.

7. Name of natural stream: Cochetopa Creek tributary to Tomichi Creek tributary to Gunnison River

8. Location: The natural stream channel from the confluence with Nutras Creek and extending to the Mesa Ditch headgate, being a distance of approximately 7.54 miles. This segment can be located on the Elk Park and Cold Spring Park U.S.G.S. quadrangles.

a. Upper Terminus:

UTM: NAD 1983 UTM Zone 13 North: 4213595.3 UTM East: 341463.6

PLSS: NW SW Section 19, Township 44 North Range 2 East of the N.M.P.M.,
at a point 728 feet East of the West Section Line and 2663 feet South of
the North Section Line

Lat/Long: latitude 38° 03' 22.43"N and longitude 106° 48' 25.26"W

b. Lower Terminus:

UTM: NAD 1983 UTM Zone 13 North: 4222336.9 UTM East: 345707.2

PLSS: NW NE Section 28, Township 45 North, Range 2 East of the N.M.P.M.
At a point 2380 feet West of the East Section Line and 1146 feet South
of the North Section Line

Lat/Long: latitude 38° 08' 8.56"N and longitude 106° 45' 38.01"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 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 11.3 cfs (May 16 – August 15), 7.5 cfs (August 16 – September 30), 4.5 cfs (October 1 – November 15), 2.75 cfs (November 16 – March 15) and 5.0 cfs (March 16 – May 15), 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 claimed of 11.3 cfs (May 16 – August 15), 7.5 cfs (August 16 – September 30), 4.5 cfs (October 1 – November 15), 2.75 cfs (November 16 – March 15) and 5.0 cfs (March 16 – May 15) in order to preserve the natural environment to a reasonable degree in the reach of Cochetopa Creek between the upstream and downstream termini 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. 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 5TH day of May, 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 31st day of May, 2011.

BY THE COURT



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