



Granted

The moving party is hereby ORDERED to provide a copy of this Order to any parties who have entered an appearance in this action within 10 days from the date of this order.

James B. Boyd

James B. Boyd
District Court Judge
Date of Order attached
FILED Document

CO Garfield County District Court 9th JD
Filing Date: Oct 27 2011 11:53AM MDT
Filing ID: 40587912
Review Clerk: Kathy Hall

DISTRICT COURT, WATER DIVISION 5
STATE OF COLORADO

109 8th Street, #104
Glenwood Springs, CO 81601

Concerning The Application For Water Rights Of:

COLORADO WATER CONSERVATION BOARD,
IN BLACK SULPHUR CREEK, A NATURAL
STREAM, IN THE WATERSHED OF PICEANCE-
YELLOW,

IN RIO BLANCO COUNTY, COLORADO

▲ **COURT USE ONLY** ▲

Case No.: 08CW94

Div.: 5

**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 5, 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. Name, address and telephone number of Applicant:

Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado, 80203
(303) 866 – 3441

3. Application: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on July 31, 2008.
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: Statements of Opposition were filed by Exxon Mobil Corporation and Equity Oil Company 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 April 21, 2009. The CWCB has addressed the Division Engineer's concerns set forth in the Summary of Consultation.
7. Name of Natural Stream: Black Sulphur Creek tributary to Piceance Creek tributary to the White River.
8. Location: The natural stream channel from the confluence with Canyon Creek as the upstream terminus and extending to the headgate of Duckett Ditch as the downstream terminus, being a distance of approximately 4.75 miles. This segment can be located on the Yankee Gulch U.S.G.S. quadrangle.
 - a. Upper Terminus:
UTM: NAD 1983 UTM Zone 13 North: 4407040.6 UTM East: 202762.6
PLSS: SW NE Section 26, Township 3 South, Range 99 West of the 6th
P.M., at a point 2200 feet West of the East Section Line and 2040 feet
South of the North Section Line
Lat/Long: latitude 39° 45' 41.2"N and longitude 108° 28' 11.06"W
 - b. Lower Terminus:
UTM: NAD 1983 UTM Zone 13 North: 4412809.1 UTM East: 206457.3
PLSS: NE SE Section 6, Township 3 South, Range 98 West of the 6th
P.M. at a point 990 feet West of the East Section Line and 1420 feet North
of the South Section Line
Lat/Long: latitude 39° 48' 52.58"N and longitude 108° 25' 45.34"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 23, 2008 by the action of the CWCB under the provisions of C.R.S. §§ 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 1.6 cfs (May 1 – August 31), 1.2 cfs (September 1 – November 30) and 1.0 cfs (December 1 – April 30), 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 5 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 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 1.6 cfs (May 1 – August 31), 1.2 cfs (September 1 – November 30) and 1.0 cfs (December 1 – April 30) in order to preserve the natural environment to a reasonable degree in the reach of Black Sulphur Creek between the upstream and downstream terminus points described in paragraph 8 above. The appropriation date for this water right is January 23, 2008.

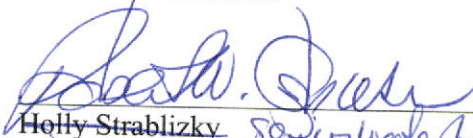
18. The priority herein awarded was filed in the water court in the year of 2008 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by the historical date of appropriation and not affected by the date of entry of ruling.
19. 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 31st day of August, 2011.

BY THE REFEREE:


~~Holly Strablitzky~~ *Senior Water Judge*
Water Referee *acting as Water Referee*
Water Division No. 5
State of Colorado
Hon^l Robert W. Ogburn

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

Water Judge
Water Division No. 5
State of Colorado

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601	Δ COURT USE ONLY Δ
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE COLORADO WATER CONSERVATION BOARD IN BLACK SULPHUR CREEK, A NATURAL STREAM IN THE WATERSHED OF PICEANCE-YELLOW, IN RIO BLANCO COUNTY, COLORADO	
COLORADO OFFICE OF THE ATTORNEY GENERAL Jennifer Mele (#30720) 1524 Sherman Street, 5th Floor Denver, CO 80203 TELEPHONE: (303) 866-5017 EMAIL: jennifer.mele@state.co.us RYLEY CARLOCK & APPLEWHITE Olivia D. Lucas (#36114) 1999 Broadway, Suite 1800 Denver, Colorado 80202 TELEPHONE: 303-813-6725 FACSIMILE: 303-595-3159 EMAIL: olucas@rcalaw.com	CASE NUMBER: 08CW94 DIVISION 5
STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER CONSERVATION BOARD AND WHITING OIL AND GAS CORPORATION	

Applicant, Colorado Water Conservation Board ("CWCB"), and Objector, Whiting Oil and Gas Corporation ("Whiting") by and through their undersigned attorneys, hereby stipulate and agree as follows:


1. CWCB and Whiting desire to enter into this Stipulation and Agreement for the purpose of resolving Whiting's opposition in this case.
2. Whiting hereby consents to the entry of a Decree in this matter that is no less restrictive on the CWCB than the proposed Decree attached hereto as Exhibit A, and agrees not to protest, appeal or otherwise challenge the entry of such a Decree.
3. This Stipulation and Agreement is entered into by way of compromise and settlement of this litigation. Any agreement or terms and conditions herein are due solely to the

unique circumstances of this case and resulting Stipulation. This Stipulation shall not establish any precedent and shall not be construed as a commitment to include any particular findings of fact, conclusions of law, or any specific engineering methodologies or administrative practices in future stipulations or proceedings.

4. Each party hereto shall bear its own costs and attorneys' fees.
5. The CWCB shall file a Motion requesting the Court to enter an Order approving this Stipulation at the time this Stipulation is filed with the Court.
6. This Stipulation shall bind and benefit the parties hereto, their successors and assigns.
7. This Stipulation shall be enforceable as an agreement between the parties or as an Order of the Court.
8. Whiting shall continue to receive copies of all pleadings filed in this matter.

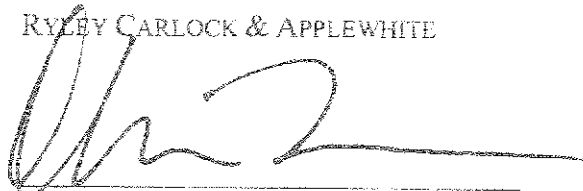
Respectfully submitted this 18th day of July, 2011.

COLORADO OFFICE OF THE ATTORNEY
GENERAL



Jennifer Mele (#30720)
*Counsel for the Colorado Water Conservation
Board*

RYLEY CARLOCK & APPLEWHITE



Olivia D. Lucas (#36114)
Counsel for Whiting Oil and Gas Company

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2011, a true and correct copy of the foregoing **STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER CONSERVATION BOARD AND WHITING OIL AND GAS CORPORATION** was e-filed via Lexis Nexis File and Serve addressed to the following:

▲Party Name	Party Type	Attorney	Attorney Type	Firm
COLORADO WATER CONSERVATION BOARD	Applicant	Mele, Jennifer	Privately Retained Attorney	CO Attorney General
DIV. 6 ENGINEER	Division Engineer	Division 6 Water Engineer	Privately Retained Attorney	Division 6 Engineer
EXXON MOBIL CORPORATION				
EXXON MOBIL CORPORATION				
STATE ENGINEER	State Engineer	State Water Engineer, Colorado	Privately Retained Attorney	State Engineers Office

DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO 109 8th Street, #104 Glenwood Springs, CO 81601	
Concerning The Application For Water Rights Of: COLORADO WATER CONSERVATION BOARD, IN BLACK SULPHUR CREEK, A NATURAL STREAM, IN THE WATERSHED OF PICEANCE- YELLOW, IN RIO BLANCO COUNTY, COLORADO	▲ COURT USE ONLY ▲
	Case No.: 08CW94 Div.: 5
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 5, 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. Name, address and telephone number of Applicant:

Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado, 80203
(303) 866 – 3441

3. Application: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on July 31, 2008.
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5. Objectors: Statements of Opposition were filed by Exxon Mobil Corporation and Equity Oil Company 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 April 21, 2009. The CWCB has addressed the Division Engineer's concerns set forth in the Summary of Consultation.
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Lat/Long: latitude 39° 45' 41.2"N and longitude 108° 28' 11.06"W
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Lat/Long: latitude 39° 48' 52.58"N and longitude 108° 25' 45.34"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 23, 2008 by the action of the CWCB under the provisions of C.R.S. §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S.
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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 5 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 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.
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19. 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 _____ day of _____, 2011.

BY THE REFEREE:

Holly Strablizky
Water Referee
Water Division No. 5
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

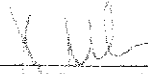
Water Judge
Water Division No. 5
State of Colorado

Applicant, Colorado Water Conservation Board ("CWCB"), and Objector, Exxon Mobil Corporation ("ExxonMobil"), by and through their undersigned attorneys, hereby stipulate and agree as follows:

1. CWCB and ExxonMobil desire to enter into this Stipulation and Agreement for the purpose of resolving the opposition of ExxonMobil in this case.
2. ExxonMobil agrees to the entry of a Ruling of Referee and Decree of the Water Court no less restrictive than the proposed Ruling of Referee and Decree of the Water Court attached to this Agreement as Exhibit A.
3. This Stipulation is entered into by way of compromise and settlement of this litigation. Any agreements or terms and conditions herein are due solely to the unique circumstances of this case and the resulting Stipulation. This Stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law, or specific engineering methodologies or administrative practices in future stipulations or proceedings.
4. ExxonMobil shall continue to receive copies of all pleadings filed in this matter.
5. The parties hereto shall bear their own costs and attorneys' fees.
6. This Agreement shall benefit and be binding upon the heirs, successors and assigns of the undersigned parties.
7. The parties jointly request the Water Referee to enter an Order approving this Stipulation.

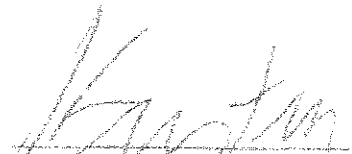
Respectfully submitted this 13th day of June, 2011.

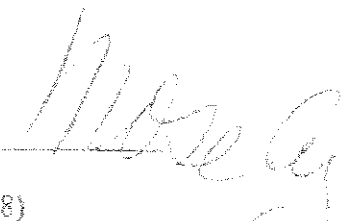
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Jennifer Mele (#30720)
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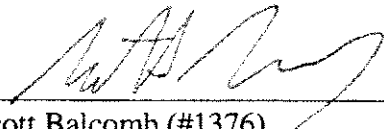
PORZAK BROWNING & BUSHONG LLP



Glenn E. Porzak (#2793)


Kristin H. Moseley (#28678)

BALCOMB & GREEN, P.C.



Scott Balcomb (#1376)

David C. Hallford (#10510)

Scott Grosscup (#35871)

Counsel for Exxon Mobil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2011, a true and correct copy of the foregoing **STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER CONSERVATION BOARD AND THE EXXON MOBIL CORPORATION** was e-filed via Lexis Nexis File and Serve addressed to the following:

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EQUITY OIL COMPANY	Opposer	Nazarenus, Brian M	Privately Retained Attorney	Ryley Carlock & Applewhite Pa-Denver
EQUITY OIL COMPANY	Opposer	Lucas, Olivia D	Privately Retained Attorney	Ryley Carlock & Applewhite Pa-Denver
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Dated this _____ day of _____, 2011.

BY THE REFEREE:

Holly Strablizky
Water Referee
Water Division No. 5
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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

Water Judge
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State of Colorado