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| DISTRICT COURT, WATER DIVISION 4<br>STATE OF COLORADO,<br>1200 N. GRAND AVE.<br>BIN A<br>MONTROSE, CO 81401   | <div style="color: red; font-weight: bold;"> EFILED Document<br/> CO Montrose County District Court 7th JD<br/> Filing Date: Nov 15 2011 8:52AM MST<br/> Filing ID: 40884501<br/> Review Clerk: Darleen Cappannokeep </div> <div style="text-align: center; margin-top: 100px;"> <b>COURT USE ONLY</b> </div> |
| <b>Concerning the Application for Water Rights of:</b><br><br>COLORADO WATER CONSERVATION BOARD,<br>IN CEBOLLA CREEK (Upper), A NATURAL<br>STREAM IN THE UPPER GUNNISON<br>WATERSHED<br><br>IN HINSDALE COUNTY, COLORADO. |   |
|   | Case No. : 10CW183<br><br>Div. 4  |
| <b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND<br/> DECREE OF THE WATER COURT</b>   |   |

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 being 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, CO 80203  
(303) 866-3441
3. Application: The CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Decree 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 expressing concerns that the mean of the calculated hydrographs for this reach of Cebolla Creek are below the requested amounts for a certain period of the year. The CWCB subsequently coordinated with the Division Engineer to resolve these concerns. This coordination included providing additional information on the CWCB's water availability analysis to the Division Engineer. The Division Engineer subsequently filed a Supplemental Summary of Consultation Report on July 26, 2011 stating that the Division Engineer does not object to entry of a decree confirming the requested amount, subject to the inclusion of the specific terms and conditions at paragraphs 12 and 13 below.
7. Name of natural stream: Cebolla Creek, tributary to Blue Mesa Reservoir.
8. Location: The natural stream channel from the confluence with Brush Creek and extending to the confluence with Spring Creek, being a distance of approximately 10.1 miles. This segment can be located on the Cannibal Plateau and Mineral Mountain USGS quadrangles.
  - a. Upper Terminus:  
UTM NAD 1983 UTM Zone 13 North: 4211107.4 UTM East: 311410.8  
PLSS: SE SE S25 T44N R3W NMPM, at a point 407 feet West of the East Section Line and 204 feet North of the South Section Line.  
Lat/Long: latitude 38° 01' 41.01"N and longitude 107° 08' 55.33"W
  - b. Lower Terminus:  
UTM: NAD 1983 UTM Zone 13 North: 4218462.5 UTM East: 321515.5

PLSS: NE NE S1 T44N R2W NMPM, at a point 307 feet West of the East Section Line and 1072 feet South of the North Section Line.

Lat/Long: 38° 05' 46.88"N and longitude 107° 02' 7.72"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 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 23.0 cfs (May 1 – September 30), 12.5 cfs (October 1 – November 15), 7.5 cfs (November 16 – March 31), and 16.5 cfs (April 1 – April 30), absolute.
12. 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(2)(a), C.R.S. in the context of requests for administration of this water right.
13. Pursuant to § 37-92-502(5)(a), C.R.S., the CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

### **CONCLUSIONS OF LAW**

14. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
15. 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.
16. The CWCB has fulfilled all legal requirements for a decree for water rights including §§ 37-92-302, 304 and 305, C.R.S.
17. 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 rights.

### **RULING OF REFEREE, JUDGMENT AND DECREE**

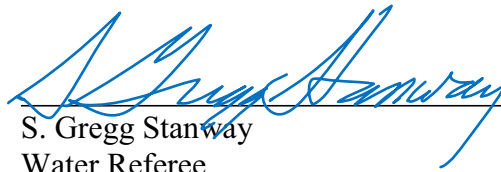
18. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee, Judgment and Decree of the Court by this reference.
19. The Application is granted and the Court hereby approves and decrees the absolute water rights described herein, in the amounts of 23.0 cfs (May 1 – September 30), 12.5 cfs (October 1 – November 15), 7.5 cfs (November 16 – March 31), and 16.5 cfs (April 1 – April 30) in order to preserve the natural environment to a reasonable degree in the reach of Cebolla Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.
20. 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 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 20<sup>th</sup> day of October, 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 the Judgment and Decree of this Court.

Dated this 11th day of Nov., 2011.

BY THE COURT

A handwritten signature in black ink, appearing to read "J. Steven Patrick", written over a horizontal line.

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