

DISTRICT COURT, WATER DIVISION 2 STATE OF COLORADO, PUEBLO CO. JUDICIAL BUILDING 320 WEST 10 <sup>TH</sup> STREET PUEBLO, CO 81003	<b>EFILED Document – District Court</b> <b>2011CW72</b> <b>CO Pueblo County District Court 10th JD</b> <b>Filing Date: Mar 5 2012 3:41PM MST</b> <b>Filing ID: 42884503</b> <b>Review Clerk: N/A</b>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN CHAPARRAL CREEK, A NATURAL STREAM, IN THE HUERFANO WATERSHED,  IN HUERFANO COUNTY, COLORADO.	<b>COURT USE ONLY</b>
	Case No.: 2011CW72  Div. 2
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, JUDGMENT AND DECREE OF THE WATER COURT</b>	

This matter comes before the Water Referee by Application of the Colorado Water Conservation Board (“CWCB”) for a water right to preserve the natural environment to a reasonable degree. The Application was filed on October 31, 2011. The Application was thereafter referred to the Water Referee for Water Division 2, by the Water Court for Water Division 2, in accordance with C.R.S. § 37-92-101 *et seq.*

The 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 for Water Division 2, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, Ruling of the Referee, Judgment and Decree in this matter:

#### FINDINGS OF FACT

1. The statements in the Application are true.
2. The name and address of Applicant:  
 Colorado Water Conservation Board  
 1313 Sherman Street, Suite 721  
 Denver, CO 80203

3. 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.
4. Objectors: No Statements of Opposition were filed and the time for filing additional Statements of Opposition has expired.
5. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to C.R.S. § 37-92-302(4), dated December 15, 2011 and the Referee has given it due consideration.
6. Name of natural stream: Chaparral Creek, tributary to the Huerfano River, tributary to the Arkansas River.
7. Location: The natural stream segment through which an instream flow is claimed: The natural stream channel from the headwaters extending to the U.S. Forest Service boundary, being a distance of approximately 3.11 miles. This segment can be located on the Cuchara and Cucharas Pass U.S.G.S. quadrangles.

Upper Terminus = Headwaters in the Vicinity of:

PLSS: NE SE Section 18, Township 31 South, Range 68 West of the 6<sup>th</sup> PM  
495' West of the East Section Line, 1898' North of the South Section Line  
UTM: Northing: 4133085.93 Easting: 497282.98 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 37° 20' 40.05"N and longitude 105° 01' 50.43

Lower Terminus = U.S. Forest Service Boundary at:

PLSS: NE NW Section 1, Township 31 South, Range 69 West of the 6<sup>th</sup> PM  
2558' East of the West Section Line, 1611' South of the North Section Line  
UTM: Northing: 4137348.62 Easting: 495039.93 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 37° 22' 58.34"N and longitude 105° 03' 21.70"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.

8. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of Appropriation: Beneficial use occurred on January 25, 2011. The appropriation was completed on January 25, 2011 by the action of the CWCB under the provisions of C.R.S. §§ 37-92-102(3) and 37-92-103(3), (4) and (10).
10. Amount of water claimed (ABSOLUTE): Instream flow of 2.5 cfs (May 1 – June 30), 1.0 cfs (July 1 – August 15), 0.45 cfs (August 16 – March 31) and 0.85 cfs (April 1 – April 30), absolute.

### CONCLUSIONS OF LAW

11. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
12. Notice and Jurisdiction. The Water Court for Division 2 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. C.R.S. §§ 37-92-203 and 302.
13. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
14. Burden of Proof. The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights required in the Application and is therefore entitled to a decree approving the requested water rights.

### RULING OF REFEREE, JUDGMENT AND DECREE

15. 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.
16. The application is granted and a decree (ABSOLUTE) in the amount of 2.5 cfs (May 1 – June 30), 1.0 cfs (July 1 – August 15), 0.45 cfs (August 16 – March 31) and 0.85 cfs (April 1 – April 30), absolute is hereby entered to preserve the natural environment to a reasonable degree in the reach of Chapparral Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 25, 2011.
17. The priority herein awarded was filed in the water court in the year of 2011 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.
18. The Applicant 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 13<sup>th</sup> day of February, 2012.

BY THE REFEREE:

Manuel R. Delmonico

Water Referee

Water Division No. 2

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 5 day of March, 2012.

BY THE COURT:

Deni Mee

Water Judge

Water Division No. 2

State of Colorado