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CO La Plata County District Court 6th JD

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Revised Clerk: Danene M Etz

DISTRICT COURT, WATER DIVISION 7 STATE OF COLORADO, LA PLATA COMBINED COURTS 1060 E. SECOND AVE. #106 DURANGO CO 81301	SEP 8 CLERK
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN ANIMAS RIVER, A NATURAL STREAM, IN THE ANIMAS WATERSHED,  IN SAN JUAN COUNTY, COLORADO.	OCT 21 N 7 CLERK
	<b>COURT USE ONLY</b>
	Case No. : 10CW87  Div. 7
<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 December 15, 2010. The Application was thereafter referred to the Water Referee for Water Division 7, by the Water Court for Water Division 7, 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 7, 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 October 17, 2011 and the Referee has given it due consideration.
6. Name of natural stream: Animas River
7. Location: The natural stream segment through which an instream flow is claimed: The natural stream channel from the confluence with Minnie Gulch as the upstream terminus and extending to the confluence with Cunningham Creek as the downstream terminus, being a distance of approximately 2.58 miles. This segment can be located on the Howardsville U.S.G.S. quadrangle.

- a. Upper Terminus = confluence with Minnie Gulch  
PLSS: SE SW Section 30, Township 42 North, Range 6 West NMPM  
1498' East of the West Section Line, 356' North of the South Section Line  
UTM: Northing 4193671.4, Easting 273660.2 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 37° 51' 44.73"N and longitude 107° 34' 22.68"W
- b. Lower Terminus = confluence with Cunningham Creek  
PLSS: NE SE Section 2, Township 41 North, Range 7 West NMPM  
323' West of the East Section Line, 1440' North of the South Section Line  
UTM: Northing 4190846.9, Easting 271398.9 (NAD 1983 Zone 13 North)  
Lat/Long: latitude 37° 50' 11.15"N and longitude 107° 35' 51.91"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.

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 26, 2010. The appropriation was completed on January 26, 2010 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 12.2 cfs (May 1 - October 31) and 9.1 cfs (November 1 - April 30).

### **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 7 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.
15. The CWCB acknowledges that this ISF will be junior to the existing conditional water rights decreed jointly to Southwestern Water Conservation District (SWCD) and La Plata County in Case No. 06CW127, and junior to any conditional water rights granted in the pending water court cases in Case No. 05CW87 filed by the Town of Silverton with legal and engineering assistance from SWCD, and Case No. 05CW88 filed by SWCD for water rights in San Juan County. The referenced cases were instrumental in the settlement of the Recreational -in- Channel Diversion ("RICD ") case filed by the City of Durango on the Animas River, and they allow for future development to occur while also providing for recreational flows for Durango. Case No. 06CW127 is decreed as a basin wide depletion amount for future consumptive uses on the Animas River and tributaries, and the Silverton and San Juan County cases were filed to provide future water supplies for the Town and County.

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

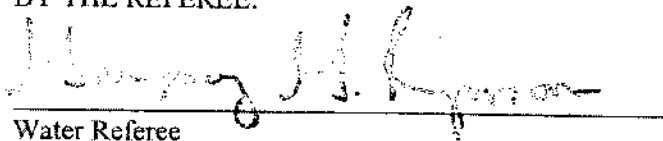
16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.
17. The application is granted and a decree (ABSOLUTE) in the amount of 12.2 cfs (May 1 - October 31) and 9.1 cfs (November 1 - April 30) is hereby entered to preserve the natural environment to a Reasonable degree in the reach of the Animas River (Upper) between the upstream and downstream termini described in paragraph 7 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 historical date of appropriation and not affected by the date of entry of ruling. 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 16th day of September, 2012.

BY THE REFEREE:



Water Referee  
Water Division No. 7  
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.

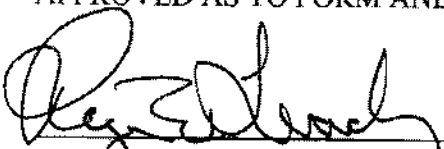
Dated this 21<sup>st</sup> day of October, 2012.

BY THE COURT:



Water Judge  
Water Division No. 7  
State of Colorado

APPROVED AS TO FORM AND ADMINISTERABILITY:

 8.23.2012

Rege W. Leach, Division Engineer  
Water Division No. 7  
Colorado Division of Water Resources  
160 Rockpoint Dr., Suite E  
Durango, CO 81301  
(970)247-1845