

DISTRICT COURT, WATER DIVISION 2 PUEBLO COUNTY, COLORADO 320 W. Tenth St., Rm. 207 Pueblo, CO 81003	EFILED Document – District Court 2008CW52 CO Pueblo County District Court 10th JD Filing Date: Sep 06 2012 02:44PM MDT Filing ID: 46301642 Review Clerk: N/A COURT USE ONLY
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN NEWLIN CREEK, A NATURAL STREAM, IN THE WATERSHED OF UPPER ARKANSAS, IN FREMONT COUNTY, COLORADO	
	Case No. : 08CW52 Div. 2
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, JUDGMENT AND DECREE OF THE WATER COURT	

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 July 25, 2008. 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 name and address of Applicant:
Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, CO 80203

2. 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.
3. Objectors: One Statement of Opposition was filed by the City of Florence and the time for filing additional Statements of Opposition has expired.
4. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to C.R.S. § 37-92-302(4), dated September 10, 2008 and the Referee has given it due consideration.
5. Name of natural stream: Newlin Creek, tributary to Hardscrabble Creek, tributary to the Arkansas River.
6. Location: The natural stream segment through which an instream flow is claimed: The natural stream channel from the confluence with an unnamed tributary as the upstream terminus and extending to the confluence with an unnamed tributary as the downstream terminus, being a distance of approximately 3.66 miles. This segment can be located on the Rockvale U.S.G.S. quadrangle.
 - a. Upper Terminus = confluence with unnamed tributary at
PLSS: NE NW Section 32, Township 20 South, Range 70 West 6th PM
1937' East of the West Section Line, 1250' South of the North Section Line
UTM: Northing 4235796.52, Easting 479019.56 (NAD 1983 Zone 13 North)
Lat/Long: latitude 38° 16' 11.89"N and longitude 105° 14' 23.45"W
 - b. Lower Terminus = confluence with unnamed tributary at
PLSS: NE SW Section 35, Township 20 South, Range 70 West 6th PM
1420' East of the West Section Line, 2569' North of the South Section Line
UTM: Northing 4235270.55, Easting 483288.56 (NAD 1983 Zone 13 North)
Lat/Long: latitude 38° 15' 55.15"N and longitude 105° 11' 27.71"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.
7. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

8. Date of Appropriation: Beneficial use occurred on January 28, 2008. The appropriation was completed on January 28, 2008 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).
9. Amount of water claimed (ABSOLUTE): Instream flow of 1.20 cfs (June 1 – June 30), 0.60 cfs (July 1 – August 15), 0.40 cfs (August 16 – February 29) and 0.80 cfs (March 1 – May 31).

CONCLUSIONS OF LAW

10. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
11. 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.
12. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
13. 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

14. 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.
15. The application is granted and a decree (ABSOLUTE) in the amount of 1.20 cfs (June 1 – June 30), 0.60 cfs (July 1 – August 15), 0.40 cfs (August 16 – February 29) and 0.80 cfs (March 1 – May 31) is hereby entered to preserve the natural environment to a Reasonable degree in the reach of the Newlin Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 28, 2008.
16. 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 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 14th day of August , 2012.

BY THE REFEREE:



Marcos R. D. America

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 6th day of September, 2012.

BY THE COURT:

LARRY C. SCHWARTZ,
Water Judge
Water Division No. 2,
State of Colorado