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DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN BIG DOMINGUEZ CREEK, A NATURAL STREAM, IN THE LOWER GUNNISON WATERSHED, IN DELTA & MESA COUNTIES, COLORADO.	
Attorneys for the Colorado Water Conservation Board: JOHN W. SUTHERS, Attorney General SUSAN J. SCHNEIDER #1991 First Assistant Attorney General* SCOTT STEINBRECHER #36957 Assistant Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: (303) 866-5017 Email: scott.steinbrecher@state.co.us *Counsel of Record	COURT USE ONLY Case No. : 10CW185 Div. 4
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE 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 December 27, 2010. The Application was thereafter referred to the Water Referee for Water Division 4, by the Water Court for Water Division 4, 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 4, 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: A Statement of Opposition was filed by Mika Ag Corp, a Colorado corporation, d/b/a Escalante Land & Cattle Company. 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 June 6, 2011 and the Referee has given it due consideration.
6. Name of natural stream: Big Dominguez Creek, tributary to the Gunnison River.
7. Location:
 - a. The natural stream segment through which an instream flow is claimed: The natural stream channel from the Dominguez Canyon Wilderness Area boundary at latitude 38° 44' 41.36"N and longitude 108° 32' 57.33"W as the upstream terminus and extending to the Dominguez Canyon Wilderness Area Boundary at latitude 38° 49' 41.33"N and longitude 108° 22' 49.25"W as the downstream terminus, being a distance of approximately 14.2 miles. This segment can be located on the Jacks Canyon, Keith Creek and Triangle Mesa U.S.G.S. quadrangles.
 - b. For administrative purposes only:

Upper Terminus =
SE SE S15 T15S R100W 6th PM
1001' West of the East Section Line, 1219' North of the South Section Line
UTM North: 4294443.8 UTM East: 191519.5

Lower Terminus =
SE SE S18 T14S R98W 6th PM
54' West of the East Section Line, 270' North of the South Section Line
UTM North: 4303137.3 UTM East: 206546.4
8. Use of Water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of Appropriation: Beneficial use occurred on May 19, 2010. The appropriation was completed on July 21, 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): All of the flow that is annually available minus the quantified allowances for future water uses set forth below. The allowances will be

allocated based upon application to water court for a decree for such uses. The quantified allowance is appropriate in this case only because the Board is seeking all of the unappropriated flows.

Land Owner	Maximum Storage Volume Allowed – AF (Total of all new water rights)	Max Diversion Rate – cfs (April 15 – June 30)	Max Diversion Rate – cfs (July 1 – October 31)
Private Parcels	100	3.30	0.198
U.S. Forest Service (USFS)	1.14	0.066	
Bureau of Land Management (BLM)	1.0	0.11	
Notes for Private Parcels:			
1. Storage volumes are for all purposes including, irrigation, stock watering, wildlife and any augmentation required for non-exempt uses. If a pond is constructed under an exempt use, such as a livestock tank filled with water from an ephemeral channel, that pond is not counted against the allowance.			
2. Domestic use that is exempt from administration under C.R.S. § 37-92-602 may also occur and is not included in this allowance.			
3. The maximum diversion rate is based on extremely limited natural water supply to the only privately-owned parcel within the watershed. The allowance assumes that one pond could be constructed with a diversion rate of 0.033 cfs into the pond.			
Notes for BLM and USFS lands:			
1. The storage volumes identified in this category are only for stock water uses on public lands administered by BLM and USFS, which may include stock water rights decreed on behalf of BLM, USFS, and the holders of livestock grazing permits. The ponds may be filled with water from surface diversions, spring diversions, or well diversions. If a pond is constructed under an exempt use, such as a livestock tank filled with water from an ephemeral channel, that pond is not counted against the allowance.			
2. For all ponds in this category, the maximum diversion rate from July 1 – October 31 is assumed to be 0.033 cfs/pond.			
3. The diversion rates shown in the table are for multiple purposes including: livestock watering, wildlife watering, and recreation. The diversion rates may be used to satisfy water needs for developed facilities, such as campgrounds, or may be used for more dispersed uses such as wildlife watering. Exempt uses, such as livestock watering wells operating at 15 gpm or less, will not count against this allowance.			

The Colorado Water Conservation Board has an existing instream flow water right on Big Dominguez Creek from the headwaters to the confluence with the Gunnison River, in the amount of 1.5 cfs (1/1 – 12/31), decreed in Case No. 4-84CW426 with an appropriation date of 5/4/1984. The flow rates sought herein are in addition to the amount of the existing instream flow water right.

CONCLUSIONS OF LAW

13. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.

14. Notice and Jurisdiction. 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. C.R.S. §§ 37-92-203 and 302.
15. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
16. Burden of Proof. 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 right.

RULING OF REFEREE, JUDGMENT AND DECREE

17. 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.
18. The application is granted and a decree (ABSOLUTE) is entered as follows: All of the flow that is annually available minus the quantified allowances for future water uses set forth below. The quantified allowance is appropriate in this case only because the Board is seeking all of the unappropriated flow.

Land Owner	Maximum Storage Volume Allowed – AF (Total of all new water rights)	Max Diversion Rate – cfs (April 15 – June 30)	Max Diversion Rate – cfs (July 1 – October 31)
Private Parcels	100	3.30	0.198
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1. The storage volumes identified in this category are only for stock water uses on public lands administered by BLM and USFS, which may include stock water rights decreed on behalf of BLM, USFS, and the holders of livestock grazing permits. The ponds may be filled with water from surface diversions, spring diversions, or well diversions. If a pond is constructed under an			

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3. The diversion rates shown in the table are for multiple purposes including: livestock watering, wildlife watering, and recreation. The diversion rates may be used to satisfy water needs for developed facilities, such as campgrounds, or may be used for more dispersed uses such as wildlife watering. Exempt uses, such as livestock watering wells operating at 15 gpm or less, will not count against this allowance.

This decree is hereby entered to preserve the natural environment to a reasonable degree in the reach of Big Dominguez Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is May 19, 2010.

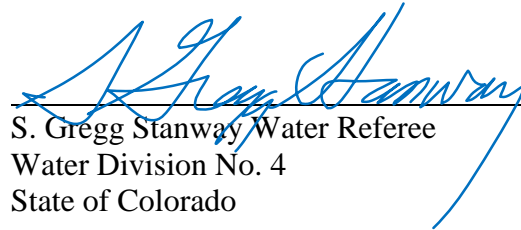
19. The priority herein awarded was filed in the water court in the year of 2010 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry 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.
20. As noted by the Colorado Supreme Court in Colorado River Water Conservancy Dist. v. Colorado Water Conservation Bd. 594 P.2d 570 (Colo. 1979), it would be an “impossible task” for the Legislature to enumerate “the forms of plant and animal life, as well as natural formations, which the legislature wished to preserve...” Id., at 576. Thus, the Legislature properly delegated to the CWCB the authority to make case-by-case “factual determinations regarding such questions as which areas are most amendable to preservation and what life forms are presently flourishing or capable of flourishing...” Id. In this case, the CWCB has, in consultation with the BLM and the Colorado Division of Wildlife, determined the habitat and life forms to be preserved and the amount of water needed for this instream flow water right based upon the unique location and natural environment to be preserved in this case only. That determination applies in this case only, and shall not serve as precedent nor be binding upon the CWCB in any other ISF appropriation.

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 21st day of November, 2012.

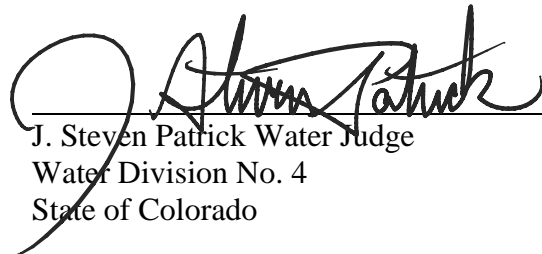
BY THE REFEREE:


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 17th day of Dec., 2012.

BY THE COURT


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

DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	<div style="color: red;"> <p> EFILED Document CO Montrose County District Court 7th JD Filing Date: Jun 27 2012 4:35PM MDT Filing ID: 45055691 Review Clerk: Darleen Cappannokeep </p> </div> <div style="text-align: center; margin-top: 100px;"> COURT USE ONLY </div>
Concerning the Application for Water Rights of: COLORADO WATER CONSERVATION BOARD, IN BIG DOMINGUEZ CREEK, A NATURAL STREAM, IN THE LOWER GUNNISON WATERSHED, IN DELTA & MESA COUNTIES, COLORADO.	
Attorneys for the Colorado Water Conservation Board: JOHN W. SUTHERS, Attorney General SUSAN J. SCHNEIDER #1991 First Assistant Attorney General* SCOTT STEINBRECHER #36957 Assistant Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: (303) 866-5017 Email: scott.steinbrecher@state.co.us *Counsel of Record	Case No. : 10CW185 Div. 4
STIPULATION BETWEEN THE APPLICANT AND MIKA AG CORP	

The Applicant, the Colorado Water Conservation Board ("CWCB"), and the only Objector, Mika Ag Corp, a Colorado corporation ("Mika Ag"), stipulate and agree as follows:

1. Mika Ag agrees to the entry of a decree in this case that is no less restrictive on the CWCB than the draft decree attached as Exhibit A.
2. By entering into this Stipulation, Mika Ag does not waive the right to object to any water right application now pending, or which may be filed in the future, by the United States of America for any livestock water right that serves or may serve livestock owned by Mika Ag.
3. Nothing in this Stipulation shall be construed to impair or grant the right of Mika Ag to pursue any pending water right application and to file new water right applications, in its name, for livestock water rights located on lands owned by the United States of America serving livestock owned by Mika Ag; provided, however, that any such application by Mika Ag shall be within the quantified allowances for such water rights on public lands specified in the draft decree attached as Exhibit A.
4. The Stipulation is entered into by way of compromise and settlement of this litigation and shall be binding upon the parties hereto, their successors, and assigns.

5. This Stipulation will be submitted to the Water Court for Water Division 4 with the request that it be approved by, and become enforceable as, an order of the court.

6. The parties will be responsible for their own attorneys' fees and costs in this matter.

Dated this 21st day of June, 2012.

Dated this 11th day of April, 2012.

JOHN W. SUTHERS

Attorney General

E-filed pursuant to C.R.C.P. 121. Duly signed

original on file at the Office of the Attorney General.



SCOTT SPEINBRECHER, #36957

Assistant Attorney General

Natural Resources and Environment Section

Attorneys for CWCB

*Counsel of Record

BROWN, SCHOTTELKOTTE, STIMPERT

& VAUGHN, LLC

E-filed pursuant to C.R.C.P. 121. Duly signed

original on file at the Office of the Attorney General.



JAMES D. BROWN, #4759

Attorneys for Opposer, Mika Ag. Corp.

970-874-4451

P.O. Box 43

Delta, CO 81416

DISTRICT COURT, WATER DIVISION 4 STATE OF COLORADO, 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	EFILED Document CO Montrose County District Court 7th JD Filing Date: Jun 27 2012 4:35PM MDT Filing ID: 45055691 Review Clerk: Darleen Cappannokeep
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6. Name of natural stream: Big Dominguez Creek, tributary to the Gunnison River.
7. Location:
 - a. The natural stream segment through which an instream flow is claimed: The natural stream channel from the Dominguez Canyon Wilderness Area boundary at latitude 38° 44' 41.36"N and longitude 108° 32' 57.33"W as the upstream terminus and extending to the Dominguez Canyon Wilderness Area Boundary at latitude 38° 49' 41.33"N and longitude 108° 22' 49.25"W as the downstream terminus, being a distance of approximately 14.2 miles. This segment can be located on the Jacks Canyon, Keith Creek and Triangle Mesa U.S.G.S. quadrangles.
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UTM North: 4303137.3 UTM East: 206546.4
8. Use of Water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of Appropriation: Beneficial use occurred on May 19, 2010. The appropriation was completed on July 21, 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): All of the flow that is annually available minus the quantified allowances for future water uses set forth below. The allowances will be

allocated based upon application to water court for a decree for such uses. The quantified allowance is appropriate in this case only because the Board is seeking all of the unappropriated flows.

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Notes for Private Parcels:			
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2. Domestic use that is exempt from administration under C.R.S. § 37-92-602 may also occur and is not included in this allowance.			
3. The maximum diversion rate is based on extremely limited natural water supply to the only privately-owned parcel within the watershed. The allowance assumes that one pond could be constructed with a diversion rate of 0.033 cfs into the pond.			
Notes for BLM and USFS lands:			
1. The storage volumes identified in this category are only for stock water uses on public lands administered by BLM and USFS, which may include stock water rights decreed on behalf of BLM, USFS, and the holders of livestock grazing permits. The ponds may be filled with water from surface diversions, spring diversions, or well diversions. If a pond is constructed under an exempt use, such as a livestock tank filled with water from an ephemeral channel, that pond is not counted against the allowance.			
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The Colorado Water Conservation Board has an existing instream flow water right on Big Dominguez Creek from the headwaters to the confluence with the Gunnison River, in the amount of 1.5 cfs (1/1 – 12/31), decreed in Case No. 4-84CW426 with an appropriation date of 5/4/1984. The flow rates sought herein are in addition to the amount of the existing instream flow water right.

CONCLUSIONS OF LAW

13. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.

14. Notice and Jurisdiction. 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. C.R.S. §§ 37-92-203 and 302.
15. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
16. Burden of Proof. 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 right.

RULING OF REFEREE, JUDGMENT AND DECREE

17. 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.
18. The application is granted and a decree (ABSOLUTE) is entered as follows: All of the flow that is annually available minus the quantified allowances for future water uses set forth below. The quantified allowance is appropriate in this case only because the Board is seeking all of the unappropriated flow.

Land Owner	Maximum Storage Volume Allowed – AF (Total of all new water rights)	Max Diversion Rate – cfs (April 15 – June 30)	Max Diversion Rate – cfs (July 1 – October 31)
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This decree is hereby entered to preserve the natural environment to a reasonable degree in the reach of Big Dominquez Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is May 19, 2010.

19. 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.
20. As noted by the Colorado Supreme Court in Colorado River Water Conservancy Dist. v. Colorado Water Conservation Bd. 594 P.2d 570 (Colo. 1979), it would be an “impossible task” for the Legislature to enumerate “the forms of plant and animal life, as well as natural formations, which the legislature wished to preserve...” Id., at 576. Thus, the Legislature properly delegated to the CWCB the authority to make case-by-case “factual determinations regarding such questions as which areas are most amenable to preservation and what life forms are presently flourishing or capable of flourishing...” Id. In this case, the CWCB has, in consultation with the BLM and the Colorado Division of Wildlife, determined the habitat and life forms to be preserved and the amount of water needed for this instream flow water right based upon the unique location and natural environment to be preserved in this case only. That determination applies in this case only, and shall not serve as precedent nor be binding upon the CWCB in any other ISF appropriation.

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 Ruing shall be filed with the Division Engineer and the State Engineer.

Dated this _____ day of _____, 2012.

BY THE REFEREE:

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 _____ day of _____, 2012.

BY THE COURT

Water Judge
Water Division No. 4
State of Colorado