

<p>Water Court, Water Division 3, State of Colorado</p> <p><input type="checkbox"/> County Court    <input checked="" type="checkbox"/> District Court</p> <p>Court address:</p> <p>Water Court, Water Division 3 702 Fourth St. Alamosa, CO 81101</p> <p>Phone Number: (719) 589-4996</p>	<p>DATE FILED: April 12, 2013</p>
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b></p> <p><b>COLORADO WATER CONSERVATION BOARD, IN KERBER CREEK, A NATURAL STREAM, IN THE SAN LUIS WATERSHED,  IN SAGUACHE COUNTY.</b></p>	
	<p>Case Number: <b>2012CW37</b></p> <p>Division   C   Courtroom</p>
<p align="center"><b>JUDGMENT AND DECREE</b></p>	

The Court finds that no protest has been filed to the Findings and Ruling of the Referee in this case within the time provided by law and that said Findings and Ruling of the Referee should be confirmed, approved and adopted.

It is, Therefore, Ordered, Adjudged and Decreed that the Findings and Ruling of the Referee entered herein on April 12, 2013 is hereby incorporated herein by reference, and confirmed, approved and adopted as the Judgment of this Court.

Dated this \_\_\_\_\_ day of May, 2013.

BY THE COURT:

Pattie P. Swift  
Water Judge  
Water Division 3

DISTRICT COURT, ALAMOSA COUNTY, COLORADO Court Address: 702 Fourth Street, West Wing, Alamosa, CO, 81101	DATE FILED: May 24, 2013   <div style="text-align: center;"><b>⚠ COURT USE ONLY ⚠</b></div> Case Number: 2012CW37 Division: C                      Courtroom:
In the Interest of: COLORADO WATER CONSERVATION BOARD	
<b>Judgment and Decree</b>	

The Court finds that no protest has been filed to the Findings and Ruling of the Referee in this case within the time provided by law and that said Findings and Ruling of the Referee should be confirmed, approved and adopted.

It is, Therefore, Ordered, Adjudged and Decreed that the Findings and Ruling of the Referee entered on April 12, 2013 is incorporated herein by reference, and are hereby confirmed, approved and adopted as the Judgment of this Court.

Issue Date: 5/24/2013



PATTIE PRATT SWIFT  
 District Court Judge

ENTERDISTRICT COURT, WATER DIVISION 3 STATE OF COLORADO, ALAMOSA CO. COURTHOUSE 702 4TH STREET ALAMOSA, CO 81101	<div style="text-align: right;">DATE FILED: April 12, 2013</div> <div style="text-align: center; margin-top: 100px;"><b>COURT USE ONLY</b></div>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN KERBER CREEK, A NATURAL STREAM, IN THE SAN LUIS WATERSHED,  IN SAGUACHE COUNTY, COLORADO.	
Attorneys for the Colorado Water Conservation Board:  JOHN W. SUTHERS, Attorney General PETER C. JOHNSON* Assistant Attorney General 1300 Broadway, 7th Floor Denver, Colorado 80203 (720) 508-6288 Registration Number: 41670 *Counsel of Record peter.johnson@state.co.us	Case No.: 2012CW37  Div. 3
<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 29, 2012. The Application was thereafter referred to the Water Referee for Water Division 3, by the Water Court for Water Division 3, in accordance with 37-92-101, C.R.S (2012).

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 3, 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 37-92-302(4), C.R.S. (2012) dated February 11, 2013 and the Referee has given it due consideration.
6. Name of natural stream: Kerber Creek, tributary to San Luis Creek.
7. Location: The natural stream channel from the confluence with Elkhorn Gulch extending to the confluence with Brewery Creek, being a distance of approximately 0.55 miles. This segment can be located on the Bonanza U.S.G.S. quadrangle. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g. confluences) of the upstream and downstream termini are provided as the decree locations. The Public Land Survey System (PLSS) and Lat/Long coordinates are provided as cross-reference locations only.
  - a) Upstream Terminus = Confluence with Elkhorn Gulch  
UTM: Northing: 4237783.91 Easting: 400028.36 (NAD 1983 Zone 13 North)  
PLSS: NW SE Section 36, Township 47 North, Range 7 East of the NMPM  
1472' West of the East Section Line, 2085' North of the South Section Line  
Lat/Long: latitude 38° 16' 57.2"N and longitude 106° 08' 34.96"W
  - b) Downstream Terminus = Confluence with Brewery Creek  
UTM: Northing: 4237184.91 Easting: 399422.13 (NAD 1983 Zone 13 North)  
PLSS: SE SW Section 36, Township 47 North, Range 7 East of the NMPM  
1851' East of the West Section Line, 85' North of the South Section Line  
Lat/Long: latitude 38° 16' 37.53"N and longitude 106° 08' 59.61"W
8. Metadata for Locations:
  - a) The UTM, PLSS and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD).
  - b) The PLSS locations in this decree were derived from CWCB GIS using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database
9. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.
10. Date of Appropriation: Appropriation and beneficial use occurred on January 24, 2012, by the action of the CWCB under the provisions of sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2012).

11. Amount of water claimed: Instream flow of 3.5 cfs (April 16 – July 15), 1.45 cfs (July 16 – October 31), 0.8 cfs (November 1 – March 1) and 1.45 cfs (March 2 –April 15), absolute.

### **CONCLUSIONS OF LAW**

12. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
13. Notice and Jurisdiction. The Water Court for Division 3 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. (2012).
14. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304 and 305, C.R.S. (2012).
15. 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**

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 in the amount of 3.5 cfs (April 16 – July 15), 1.45 cfs (July 16 – October 31), 0.8 cfs (November 1 – March 1) and 1.45 cfs (March 2 –April 15), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Kerber Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 24, 2012.
18. The priority herein awarded was filed in the water court in the year of 2012 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.
19. 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 12th day of April, 2013.

BY THE REFEREE:



Patrick H. Hayes

2013.04.12

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Water Referee

Water Division No. 3

State of Colorado