

DISTRICT COURT, WATER DIVISION 1, COLORADO 901 9TH AVENUE P.O. BOX 2038 GREELEY CO 80632	DATE FILED: May 31, 2013
Concerning the Application for Water Rights of:  COLORADO WATER CONSERVATION BOARD, IN JOHNSON CREEK, A NATURAL STREAM, IN THE UPPER LARAMIE WATERSHED,  In Larimer County	
Case No. : 12CW275	
<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 6, 2012. The Application was thereafter referred to the Water Referee for Water Division 1, by the Water Court for Water Division 1, 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 1, 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. Opposers: 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 March 31, 2013, and the Referee has given it due consideration.
6. Name of natural stream: Johnson Creek tributary to the Laramie River.
7. Location: The natural stream channel from the confluence with Fish Creek extending to the confluence with Pole Creek being a distance of approximately 1.33 miles. This segment can be located on the Old Roach 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 Fish Creek  
UTM: Northing: 4537334.73 Easting: 409421.54 (NAD 1983 Zone 13 North)  
PLSS: NW1/4 SE1/4 Section 30, Township 12 North, Range 77 West of the 6<sup>th</sup> PM  
2163' East of the West Section Line, 2555' North of the South Section Line  
Lat/Long: latitude 40° 58' 55.77"N and longitude 106° 04' 36.17"W
  - b) Downstream Terminus = Confluence with Pole Creek  
UTM: Northing: 4538218.75 Easting: 411083.62 (NAD 1983 Zone 13 North)  
PLSS: SW1/4 SE1/4 Section 20, Township 12 North, Range 77 West of the 6<sup>th</sup> PM  
1877' West of the East Section Line, 458' North of the South Section Line  
Lat/Long: latitude 40° 59' 25.09"N and longitude 106° 03' 25.51"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 March 21, 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 3.8 cfs (April 1 – October 31), and 1.6 cfs (November 1 – March 31), 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 1 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.
16. This instream flow water right will not deprive the people of the State of Colorado of the beneficial use of those waters available by law and interstate compact, specifically as decreed in *Wyoming v. Colorado*, 259 U.S. 419 (1922), *as modified at* 260 U.S. 1 (1922), *as further modified at* 298 U.S. 573 (1936), *as further modified at* 309 U.S. 572 (1940), *as further modified at* 353 U.S. 953 (1957).

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

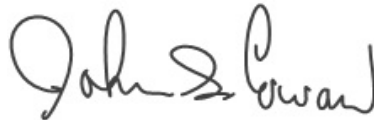
17. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.
18. The application is granted and a decree in the amount of 3.8 cfs (April 1 – October 31), and 1.6 cfs (November 1 – March 31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Johnson Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is March 21, 2012.
19. 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.
20. 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.

Date: May 8, 2013

BY THE REFEREE:

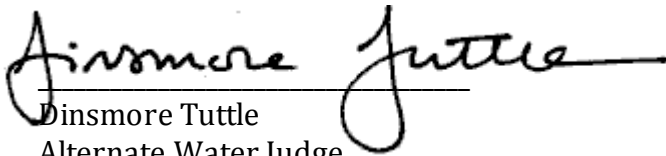
A handwritten signature in black ink, appearing to read "John S. Cowan". The signature is fluid and cursive, with the first name "John" and last name "Cowan" clearly distinguishable.

John S. Cowan  
Water Referee  
Water Division No. 1

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: 31 May 2013

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dinsmore Tuttle". The signature is cursive and elegant, with a long horizontal stroke extending from the end of the name.

Dinsmore Tuttle  
Alternate Water Judge  
Water Division 1