

DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: July 12, 2015 9:51 AM
In the Interest of: COLORADO WATER CONSERVATION BOARD	<p style="text-align: center;"><b>⚠ COURT USE ONLY ⚠</b></p> <p>Case Number: 2014CW3158 Division: E                      Courtroom:</p>
<b>Decree: Proposed Order</b>	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 7/12/2015



JAMES BERKLEY BOYD  
District Court Judge

DISTRICT COURT, WATER DIVISION 5 GARFIELD COUNTY, COLORADO 109 8th Street, Suite 104 Glenwood Springs, Colorado 81601	
<b>CONCERNING THE APPLICATION FOR          INSTREAM FLOW WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION          BOARD, IN EAST DIVIDE CREEK (LOWER), A          NATURAL STREAM, IN THE COLORADO          HEADWATERS – PLATEAU WATERSHED,           IN GARFIELD COUNTY, COLORADO.</b>	<b>▲ COURT USE ONLY ▲</b>
	Case No. 14CW3158  Division: 5
<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 19, 2014. The Water Court for Water Division 5 referred the Application to the Water Referee for Water Division 5, by in accordance with C.R.S. § 37-92-101.

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 5, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, and Ruling of the Referee 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 718  
 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 C.R.S. § 37-92-302(4), dated March 24, 2015. The CWCB has responded to the Summary of Consultation and the Referee has given the Summary and response due consideration.
6. Name of water right: Lower East Divide Creek Instream Flow Water Right.
7. Legal Description: The Lower East Divide Creek Instream Flow Water Right is located in the natural stream channel from the confluence with Camp Creek extending to the confluence with June Creek being a distance of approximately 9.51 miles. This segment of East Divide Creek can be located on the Center Mountain and Gibson Gulch U.S.G.S. quadrangles. A map of the Lower East Divide Creek Instream Flow Water Right is attached as Exhibit 1.
  - A. Upstream Terminus = Camp Creek and East Divide Creek confluence at:
    1. UTM: Northing: 4362318.95 Easting: 286791.88 (NAD 1983 Zone 13 North)
    2. PLSS: SE SE Section 6, Township 8 South, Range 90 West 6<sup>th</sup> PM 215 feet West of the East Section Line; 828 feet North of the South Section Line.
    3. Lat/Long: latitude 39° 23' 2.55"N and longitude 107° 28' 31.83"W.
  - B. Downstream Terminus = June Creek and East Divide Creek confluence at:
    1. UTM: Northing: 4368121.47 Easting: 277882.17 (NAD 1983 Zone 13 North).

2. PLSS: SE NW Section 20, Township 7 South, Range 91 West 6<sup>th</sup> PM 1,658 feet East of the West Section Line; 2,100 feet South of the North Section Line.
3. Lat/Long: latitude 39° 26' 2.5"N and longitude 107° 34' 50.83"W.
- C. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g., confluences) of the upstream and downstream termini are provided as the legal descriptions for this decree. The Public Land Survey System (PLSS) and Lat/Long coordinates are provided as cross-reference locations only. The UTM, PLSS and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). 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.
8. Source: East Divide Creek, tributary to Divide Creek, tributary to Colorado River.
9. A. Date of initiation of appropriation: January 28, 2014.  
B. How appropriation was initiated: Appropriation and beneficial use occurred on January 28, 2014 by the action of the CWCB under the provisions of C.R.S. §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10).  
C. Date applied to beneficial use: January 28, 2014.
10. Amount of water claimed: Instream flow of 3.0 cubic feet per second ("cfs") (4/1 – 4/15), 7.2 cfs (4/16 – 6/30), 3.0 cfs (7/1 – 7/31) and 1.1 cfs (8/1 – 3/31), absolute.
11. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

### 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 5 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.
14. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
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**

16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of Referee by this reference.
17. The application is granted and a decree in the amount of 3.0 cfs (4/1 – 4/15), 7.2 cfs (4/16 – 6/30), 3.0 cfs (7/1 – 7/31) and 1.1 cfs (8/1 – 3/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of East Divide Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 28, 2014.
18. The priority herein confirmed was filed in the water court in the year of 2014 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 19th day of May, 2015.

BY THE REFEREE:



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Holly K. Strablizky, Water Referee  
Water Division No. 5

Attachment to Order - 2014CW3158

**JUDGMENT AND DECREE OF THE WATER COURT**

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 \_\_\_\_\_, 2015.

BY THE COURT:

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James Boyd, Water Judge  
Water Division No. 5

Attachment to Order - 2014CW3158

